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No. _____

In The
Supreme Court of the United States

BRIAN M. LOVETT,
Petitioner,

v.

LAURIE LOVETT,
Respondent.

On Petition For Writ Of Certiorari To The Supreme Court of Illinois

PETITION FOR WRIT OF CERTIORARI

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Petitioner

QUESTIONS PRESENTED

1. Can a state circuit court eliminate or modify the fundamental parental rights of a fit father based solely on a judge's determination that it is in the best interest of the child without a threshold showing of harm?

2. Can a state circuit court limit a fit father's speech to his child based solely on a judge's determination that it is in the best interest of the child without a threshold showing of harm?

3. Is fitness the only proper legal criterion for infringing on a parent's fundamental right to the care, control, and custody of his child?

4. Upon or during divorce, does a fit parent still retain the fundamental right to the care, control, and custody of his child?

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Mr. Brian Lovett respectfully requests certiorari to review the judgment of the Supreme Court of Illinois affirming the decision of the Appellate Court of Illinois.

OPINIONS BELOW

The opinion of the Supreme Court of Illinois is reported as No. 103931. The opinion of the Appellate Court of Illinois First Judicial District is reported as Nos. 1-04-1602 and 1-05-0149 Consolidated. The opinion of the Circuit Court of Cook County, Illinois is reported as No. 00 D 6725.

JURISDICTION

The judgment of the Supreme Court of Illinois denying petition for leave to appeal was entered on March 28, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. 1257. In accordance with Rule 29.4(c), 28 U.S.C. 2403(b) may apply. No Illinois court certified to the Illinois Attorney General the fact that the constitutionality of a statute was drawn into question.

CONSTITUTIONAL AND STATUTORY LAW PROVISIONS

The relevant constitutional and statutory provisions involved are set forth in Appendix E, *infra*.

STATEMENT

Petitioner filed for divorce from Respondent on April 28, 2000, approximately five months after the birth of their daughter and 2.5 years after they were married. In July, 2000, the parties attempted to reconcile but, after struggling for eleven months, both agreed they could not.

Petitioner and Respondent are both fit parents and their daughter was a happy and healthy child, as Respondent's attorney confirmed on the second day of trial: "fitness is not an issue in this case." (S.R. Vol. 3: 105 lines 2-4). The circuit court confirmed that "I don't have the State alleging neglect or abuse or dependency." (S.R. Vol. 3: 111 lines 1-2). (See also: R. Vol. 10: C2260 ¶17; R. Vol. 10: C2265;

R. Vol. 10: C2287 ¶71; R. Vol. 10: C2287 ¶72; R. Vol. 10: C2293 ¶95; R. Vol. 10: C2294 ¶97; R. Vol. 10: C2297 ¶111; see also Respondent's testimony (e.g., S.R. Vol. 7: 92-102, 151-153; Vol. 9: 97 lines 9-14; see also Respondent's attorney's argument: Vol. 11: 54 lines 2-7)). As the circuit court judge summarized:

> "We've got one child, we've got two parents. We will always have the one child and two parents, and you will be the parents of this child forever and ever, and the mom will be the mom of this child forever and ever. The dad will be the dad of this child forever and ever. But what we have is a situation... where mom and dad will no longer be living together in the same house with the child. So what do we do to make sure that that little one has a meaningful relationship with mom and dad, and [what] do we do to make sure that dad and mom have meaningful relationships with this child? That's what our case is about." (S.R. V3: 111 lines 21-24, 112 lines 1-9).

Petitioner's first attorney fired Petitioner as a client in court when he refused to accept a visitation schedule proposed by the circuit court judge and the Guardian Ad Litem for four out of every fourteen days. Shortly after Petitioner hired a replacement attorney, on March 26, 2002, the parties negotiated an agreement that attempted to set-out the temporary and permanent disposition of some of the most contentious topics while the divorce was pending (e.g., custody, parenting schedules, living arrangements, child support, future income and expenses, property). This agreement provided for equal custody and parenting time pending final judgment. Petitioner later fired his second attorney. Subsequently, Petitioner filed his appearance as *pro se* seeking to have multiple Illinois statutes and rules related to divorce declared unconstitutional.

Petitioner, *intra alia*, challenged the constitutionality of all Illinois statutes that refer to the "best interest of the child" (i.e., 750 ILCS 5/602, 603, 604, 607, 609, 610, 503 (g), and 506, as well as any other sections and rules that refer to "best interest of the child") (hereinafter "Best Interest of the Child Statutes"), on their face and as applied, which compel the state's judiciary to make "awards" of child custody and parenting time, or allocation of parental responsibilities, privileges, and parenting time, or assignment of "guardians" and "evaluators," within the context of dissolution of marriage actions and post-decree dissolution of marriage actions concerning children. Petitioner contended that the challenged statutes and rules violate well-recognized fundamental rights, including the right to due process, the right to equal protection, the right to privacy, and the right to the care, custody, control, companionship, and nurture of one's offspring embodied in the fundamental liberty interest in family, which rights are secured by the Fourteenth Amendment.

On June 1, 2004, approximately ten months after an eighteen-day, non-jury trial, and without any finding of unfitness, harm, or risk of harm, the circuit court entered a Judgment for Dissolution of Marriage (hereinafter "Judgment") denying Petitioner's request to find the referenced statutes unconstitutional. Additionally, the circuit court, *intra alia*, awarded sole custody of their daughter to Respondent with very limited visitation for Petitioner. As the Judgment states, "the Wife, LAURIE LOVETT, shall have the sole care, custody, control and education of the minor child of the parties, SAMANTHA LOVETT." (87a).

On June 11, 2004, and without any finding of unfitness, harm, or risk of harm, the circuit court ordered a permanent injunction (hereinafter "Injunction") against Petitioner on his communications with his daughter "...enjoining him from talking to Samantha about the Judgment of Dissolution of

Marriage, the appeal from that Judgment or his alleged fight for Samantha." (18a).

On November 22, 2006, the Appellate Court of Illinois issued its decision and affirmed the circuit court orders and the challenged statutes and rules. The Supreme Court of Illinois denied a petition for leave to appeal on March 28, 2007.

REASONS FOR GRANTING THIS PETITION

I. WHEN A STATE LAW OR RULE AFFECTS FUNDAMENTAL RIGHTS, THE TRADITIONAL STANDARD OF APPELLATE REVIEW IS ABANDONED, THERE IS NO PRESUMPTION OF CONSTITUTIONALITY, AND THE COURT IS REQUIRED TO APPLY "STRICT SCRUTINY"

Despite the well-settled and axiomatic precedent that when a state law or rule affects fundamental rights, the traditional standard of appellate review is abandoned, there is no presumption of constitutionality, and the court is required to apply "strict scrutiny," and which is cited in many decisions of this Court (e.g., *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Harris v. McRae*, 448 U.S. 297, 312 (1980)) and of those within Illinois (e.g., *Lulay v. Lulay*, 193 Ill. 2d 455, 476 (2000); *Langman v. Langman*, 325 Ill.App.3d 101, ¶32 (2001) www.versuslaw.com; *People of the State of Illinois v. R.G.*, 131 Ill. 2d 328 ¶45, 47 (1989) www.versuslaw.com), the Illinois courts rendered a decision that completely ignored these basic legal principles. After departing so far from the accepted and usual course of judicial proceedings, the Illinois courts then ignored every case from this Court, over 80 years of decisions, dealing with "fit" parents, children, and the "best interest of the child" standard.

These are not legal principles that are in dispute in any court in America. As this Court has made undoubtedly clear,

a review of statutes that impinge on fundamental rights must only use "exacting" strict scrutiny. *Clark v. Jeter*, 486 U.S. 456, 461 (1988). Ergo, the Illinois courts erred as a matter of law by failing to apply the correct standard of review to state actions which implicate liberty interests and fundamental rights. *San Antonio School District v. Rodriguez*, 411 U.S. 1, 16-17 (1973). This Court's supervisory power is required.

The Judgment states: "That the Wife, LAURIE LOVETT, shall have the sole care, custody, control and education of the minor child of the parties, SAMANTHA LOVETT." (87a). Equal to Respondent, there is not any question that Petitioner had a fundamental constitutionally-protected right to make decisions concerning the care, custody, and control of his child before filing for divorce (e.g., see "rights to... raise one's children have been deemed 'essential,'... 'basic civil rights of man'" *Weinberger v. Salfi*, 422 U.S. 749, 771 (1975); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); "[T]he liberty... to direct the upbringing and education of children... are among the basic civil rights of man" (citations omitted) (Stevens concurring) Thornburgh v. American Coll. Of Obst. & Syn., 476 U.S. 747, 773 (1986)). However, subsequent to receiving the Judgment from the circuit court, Petitioner no longer had these "essential," "basic civil rights of man" anymore, as the circuit court eliminated them. The decision by the circuit court, and upheld by the appellate and state supreme courts, used the state statutes and procedures to negatively alter Petitioner's parental rights without the due process and equal protection required by the Fourteenth Amendment.

Fundamental rights must be evaluated under a strict scrutiny analysis. To withstand the strict scrutiny test, a statute must serve a compelling state interest, and the statute must be narrowly tailored to serve the compelling interest. It is exceptionally striking and disturbing that even the Supreme Court of Illinois, citing this Court's authority,

wrote specifically that a compelling interest is not invoked just because parents divorce:

> "The State maintains that it has an interest under these circumstances in protecting these children whose lives have been disrupted because of their parents' divorce. This interest is nothing like the compelling interests involved in cases such as R.G. and Prince. Moreover, the parents in this case, Michael and Kiley Lulay, have not been alleged to be unfit. We therefore presume that they are acting in the best interests of their children. See Troxel, 530 U.S. at ___, 147 L. Ed. 2d at 58, 120 S. Ct. at 2061." *Lulay v. Lulay*, ¶73. See also *Langman v. Langman*, ¶32.

A statute, by its mere existence "on the books," cannot overcome fundamental individual rights and liberty interests. *Troxel v. Granville*, at 65. There must exist a compelling state interest before the state can impair fundamental rights, even in the face of apparent statutory empowerment to the contrary, as evidenced by the fact that the standard of review of such a decision is one of strict scrutiny.

As both parents are fit, the circuit court lacked a narrowly tailored, compelling interest in removing Petitioner's fundamental rights to his child. "[I]f a law "impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional." *Harris v. McRae*, at 312.

II. FITNESS IS THE ONLY PROPER LEGAL CRITERION FOR INFRINGING ON A PARENT'S FUNDAMENTAL RIGHT TO THE CARE, CONTROL, AND CUSTODY OF HIS CHILDREN

There are few issues on which this Court has spoken so consistently – and so eloquently – as that of parental rights. However, this Court has not heretofore decided the precise

questions presented. The two overall themes of *all* of this Court's decisions regarding parental rights is that: 1) "until the state proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of the natural relationship" *Santosky v. Kramer*, 455 U.S. 745, 760 (1982), and; 2) "the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v. Granville*, at 66.

The state courts erred as a matter of law by: a) refusing to acknowledge that fit parents are vested with a liberty interest in their children; b) by avoiding a determination that a parent's rights are fundamental, and; c) by sanctioning a divorce court's actions to deprive a biological parent of equal custodial parenting status without a finding that Petitioner was an unfit parent.

Considering what is in a child's best interest is undoubtedly important in any decision that impacts a child's well-being. However, applying the best interest of the child standard with its associated factors, by definition, is based on the personal and private biases of a judge. Yet, even in the very case cited as support by the Appellate Court of Illinois, it is clear that this Court considers application of these biases as violations of constitutional protections:

> "The question... is whether the reality of private biases and the possible injury they might inflict are permissible considerations for removal of [a] ...child from the custody of its natural [parent]. We have little difficulty concluding that they are not. The Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect." (Footnote omitted.) *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984).

A. Petitioner is a fit parent; no evidence exists of abuse or risk of harm.

Petitioner and Respondent are both fit parents and their daughter was a happy and healthy child, as Respondent's attorney confirmed on the second day of trial: "fitness is not an issue in this case." (S.R. Vol. 3: 105 lines 2-4). The circuit court even indicated that "I don't have the State alleging neglect or abuse or dependency." (S.R. Vol. 3: 111 lines 1-2). (See also: "Samantha has no adjustment problems and she has been thriving over the past 15 months." (25a, ¶17); "Factor 3: the Father has an excellent relationship with the Child Factor 4: the Child has no significant adjustment problems; the Child is thriving" (33a); "That on adverse examination the Wife testified that she has no concerns that the Husband will not be able to provide for the Child's basic needs, provide a proper home, food, proper education, or a safe environment. The Wife testified that she believes the Father loves the Child and the Child loves the Father and that the Child enjoys the time she spends with the Father." (67a, ¶71); "That on adverse examination the Wife testified that the Father "absolutely needs to be a participant in the Child's life", and the Wife stated, "You will always be Samantha's father; I will always be Samantha's mother. You will see her, speak to her, enjoy her, support her, share holidays with her, be a father to her." The Wife testified that the Father's relationship with the Child and the Child's relationship with the Father "is strong and will continue to get stronger" because the Father is dedicated to being a father. The Wife testified that... if (the Father) is there for the Child then the relationship will grow." (67a, ¶72); "That the Wife testified that the Child is healthy, physically active..." (77a, ¶95); "The Wife stated that her feelings changed when she recognized the importance of the Child seeing her Dad on a regular basis, frequently, with his participation..." (78a, ¶97); "The Wife testified that the Husband's strengths are that... he loves the

child, he has good teaching skills, he is very animated and athletic, he teaches the Child athletic things." (83a, ¶111).

Therefore, parental control has not faltered, not to mention that it is clear that Petitioner is an exceptional father. Ergo, and regardless of the "murky" and "dubious relevance" of the phrase (*In re Gault*, 387 U.S. 1, 16 (1967)), the State has no role as *parens patriae*. *Santosky v. Kramer*, at 766 and footnote 17.

B. The only proper criterion for infringing on a parent's fundamental right is fitness.

The Best Interest of the Child Statutes have an unmistakable and intended direct effect on the fundamental right to parent. The Best Interest of the Child Statutes place an absolute bar against a fit parent to exercise his rights. Per the Judgment, by "awarding" Respondent sole custody, the circuit court has completely deprived Petitioner of any decision-making authority and control of his daughter. Additionally, the circuit court has completely deprived Petitioner of the ability to see his daughter equally (in relation to his ex-wife). These decisions were erroneous because Petitioner was not found to be unfit. To avoid state impairment of parental rights, one need only be a "fit" parent. *Troxel v. Granville*, at 67.

The criterion for "fitness" only requires that one "adequately cares for his or her children." As long as one is fit in this regard, one is entitled to the full constitutional protection of one's liberty interest in family. Petitioner has not been shown to be an unfit parent and, therefore, the courts have no reason to inject themselves into the realm of his relationship with his daughter and separate him from her. *Stanley v. Illinois*, at 652–653. The decision by the circuit court to force itself into the private realm of Petitioner's relationship with his daughter and deprive him of his rights to his child was a flagrant violation of his full constitutional

protection of his liberty interest in family. Prior to the Best Interest of the Child Statutes, the Illinois courts understood this:

> "A court is only warranted in depriving a father of the custody of his child where the evidence discloses that the child is destitute, abandoned or dependent; that the father is living an immoral life or in vicious or disreputable circumstances; that he has neglected or treated the child cruelly or unkindly or that he may so treat the child; that he is wanting in good principles or that he is illy adapted to the care of the child on account of defects in his mental or physical qualities which prevent him from being a kind and affectionate father." *Jarrett v. Jarrett*, 348 Ill. App. 1, at ¶20 (1952) www.versuslaw.com.

The triggering mechanism of a divorce is not a sufficient-enough reason to allow the state to impermissibly intervene and interrupt the associative right of the child and parent in the parent-child relationship. As Illinois's own *Lulay v. Lulay* and *Langman v. Langman* readily assert, the state cannot support the argument that a child is in imminent harm just because the parents are divorcing, for alleged parental conflict may or may not rise to a level compelling state intervention. Where a parent is fit, the legal presumption implies that the child is not in imminent harm. Where the child is not in imminent harm, there are no competing interests to a parent's right to the care, custody, and companionship of the child. Where there are no competing interests, the child's best interests are already protected. *Santosky v. Kramer*, at 759–761.

Moreover, the fundamental right of a parent to raise his or her own child has never been premised on any kind of expertise. The right to raise one's own child as one sees fit is no more subject to any expert opinion (e.g., a judge's, a

lawyer's, an evaluator's) about a child's "best interest" than is the right to freedom of religion subject to precisely analogous "expert" opinions about consistent theology. Citizens have the right to raise their children; citizens have the right to freedom of religion – in both cases the opinions of "experts" about how well citizens exercise those rights have no bearing upon whether citizens actually possess those rights. To say otherwise is *reductio ad absurdum*, since rights that are subject to such "expert" opinions are not rights at all. This is critically important in light of the obvious inability of mental health "experts" to achieve consensus on any notions of the "best interest of the child" other than protection from abuse or criminal neglect. (S.R. Vol. 10: 166-169; see also S.R. Vol. 2: 226-236 discussing recommendations of custody evaluation report and associated "expert" witnesses must be barred as "junk science" and Petitioner's Motion in Limine (R. Vol. 5: C1007-1011)).

Therefore, the state cannot interfere by assigning a Guardian Ad Litem to protect the "best interest" of the child, as fit parents are already, by definition, protecting the child's best interest. Further, the state may not infringe on a fit parent's right to property and require him to fund an officer of the court with his private property against his will. The state also cannot interfere and require a custody evaluation to "evaluate" or identify the physical or mental state of the parties, or identify the "best interest of the child." Further, the state may not infringe on a fit parent's right to privacy and property by forcing him to subject himself to a custody evaluation/psychological review, reveal information to a stranger, and then fund the process with his private property, all against his will.

There is no significant difference between termination of a parent's rights to his children and making him a non-custodial parent with no decision-making authority or control

over his children (not to mention significantly reducing his parenting time). The entire concept of "awarding custody" is flawed; no one is awarded rights but, rather, one parent is deprived of rights. Petitioner divorced his wife – not his daughter, and the state (i.e., court) has no compelling reason for taking his daughter away from him or interfering in his child-rearing decisions. In every contested child custody case in which there is no finding of parental unfitness by clear and convincing evidence, a court always denies one parent equal protection when it apportions custody unequally between the parties and severs the legal (and often emotional) bond between the so-called "non-custodial" parent and the child. Respondent's attorney even correctly confirmed that "[t]he cases since 1999 in Illinois have almost universally rejected joint custody." (S.R. Vol. 11: 68 line 22, 69 line 1). However, mere repetition does not establish validity.

C. Petitioner has a right to privacy and a right to be an equal parent.

As there is no abuse or risk of substantial harm, and as it is a parent's right to manage a child, and as this right is a fundamental right protected by the Federal Constitution (e.g., *Troxel v. Granville*), the circuit court does not have the authority or jurisdiction to force/inject itself into Petitioner's private life (*Griswold v. Connecticut*, 381 U.S. 479, 495–496 (1965)) "under the guise of protecting the public interest" (*Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923)) through the "best interest of the child." This Court has specifically said that the

> "Due Process Clause would be offended "[if] a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was

thought to be in the children's best interest." *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978).

Yet, this is exactly what happened here. Petitioner contends that the unequal allocation of parenting time, parental responsibilities, and rights by the trial court constituted an unconstitutional infringement of his fundamental liberty interest in his family and his rights under the Equal Protection and Substantive Due Process Clauses of the Fourteenth Amendment of the Federal Constitution.

As the circuit court judge correctly claimed, Petitioner stands in the same relation to his daughter during and after the divorce proceedings as he did before the proceedings, as a divorced parent is still the parent:

> "What I have highlighted in my own personal notes as I listen to you is something that I want to stress now and that I want you and Mrs. Lovett to remember as this case proceeds, because this is just one short snapshot in time and in the time of your life and in the life of your daughter. When this case is over, the mother will still be the mother of this child. And when this case is over, the father will still be the father of this child. And I don't hear that from you. What I hear from you, Mr. Lovett, is that you haven't really grasped that the only father this child is ever going to have is you. You are her dad. The only mother this child is ever going to have is your wife. She is the mom, and divorced or married, that doesn't change. And I am listening to you and you haven't gotten to that step yet. You need to make a fast forward, sir. You will always be the father and mom will always be the mother." (Judge R. Morgan Hamilton, S.R. Vol. 3: 18 lines 14-24, 19 lines 1-8).

This relationship is independent of any other relationship that exists with any other person. A divorce does not (or, rather, should not) nullify or reduce the relationship between Petitioner and his daughter:

> "Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." *Santosky v. Kramer*, at 753.

The parties' divorce, even though it includes a child, does not give a court a special circumstance to usurp Petitioner's parental authority and rights. Any court decision that favors Respondent over Petitioner and interferes with Petitioner's privacy will eventually destroy an intact relationship. "The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection." *Stanley v. Illinois*, at 651. When the parties were not getting divorced, the court did not have the authority or jurisdiction to infringe or restrict one parent's fundamental rights by forcing either parent to accept an unequal parenting/custody schedule.

Petitioner accepts that dissolution of his marriage would of necessity act to diminish the amount of time spent with his child, but contends that the state's power to arbitrarily apply the statutory factors set forth specifically in 750 ILCS 5/602 or broadly in the 750 ILCS 5, Illinois Marriage and Dissolution of Marriage Act, in light of the fact that no credible evidence exists herein to implicate Petitioner as an

unfit parent, or that no "clear and present danger" exists, resulted in a capricious "custody" decision which flagrantly violates Petitioner's right to equal protection by "awarding" (or, more appropriately, allowing) him unequal parenting time and parental responsibilities as compared with Respondent. "The statist notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition." *Parham v. J.R.*, 442 U.S. 584, 602 (1979).

The welfare of citizens, including children, is an important state interest. However, the state cannot impinge upon the protected and underlying fundamental rights of its citizens – adults or children. There is no public purpose that demands the harm and social damage to the fundamental parent-child relationship where the child is implicitly protected by a fit parent. The Best Interest of the Child Statutes do not require a threshold showing of harm and permit a court to exercise virtually infinite discretion in "allocating" parental rights and responsibilities, parenting time and "awards" of custody, "guardians" and "evaluators," with the only requirement being that the judicial outcomes be "found" – solely by the court whom has no "special wisdom" – to serve the "best interest of the child," which is, in fact, determined by the court itself. Yet, the "best interest" standard "provides little real guidance... [and] is fundamentally at odds with privacy interests." *Bellotti v. Baird*, 443 U.S. 622, 638 and 655–656 (1979).

Lacking a requirement that a child is, or ever was proven to be, in substantial harm, the Best Interest of the Child Statutes are facially unconstitutional. Frequently, the legal community uses the term "best interest of the child" to gloss over constitutional mandates and turn fit parents into criminals (e.g., removing most all rights to their children, eliminating their ability to see their children, forcing them to

pay purported child support with a threat of imprisonment if they do not). "Best interest" is actually a legal standard placing the trial judge, and hence the state, superior to fit parents. Its only proper use is after parental rights are terminated or after a threshold showing of harm. *Quilloin v. Walcott*, at 255. Courts can reasonably claim to know that the "best interests of children" means protecting children against abuse and/or criminal negligence. They cannot reasonably claim to know more. Thus, in all cases in which court decisions implement disproportionate custody schedules and privileges as between fit parents, those decisions are *per se* capricious and unconstitutionally violative of liberty interests.

As the circuit court readily admitted during the trial, two classes of parents exist: custodial and non-custodial. (S.R. Vol. 3: 155 lines 7-12). The Best Interest of the Child Statutes unnecessarily create these two classes of parents out of essentially similarly situated persons, thus committing an equal protection under-inclusive violation (i.e., treats persons with the same capabilities differently). Additionally, the Best Interest of the Child Statutes automatically place fit parents in the same group as unfit ones and subject them all to the best interest of the child legal standard, thus causing an equal protection over-inclusive violation (i.e., treats persons with different capabilities the same, and sweeps in more than it should). No contested divorce with children in Illinois can achieve a constitutional resolution under federal law where both parents' rights are implicated, for the non-custodial parent's rights are always denied, and the custodial parent's rights are always enlarged without an evidentiary standard other than the discretion (i.e., best interests) of the trial court.

The circuit court stated: "This is not a case where a child is being taken from a parent. This is a case where the child will have the same two parents, when it is over, that the child

started out with." (S.R. Vol. 3: 103 lines 18-21). Yet, the circuit court did just that, in that Petitioner is only allowed to now see his daughter 16% of the time, and he has no decision-making capability whatsoever. Petitioner asserts that there is not any difference between allowing a parent 16% visitation time (while taking away all other decision-making rights) and "a child being taken from a parent." Contrary to the circuit court's claim, this *is* a case where a child was taken from a parent, regardless of the privilege of 16% visitation time.

A statute, in and of itself, cannot trump the Federal Constitution. In this case, the so-called Best Interest of the Child Statutes are routinely utilized by the courts to effectively limit or reduce parental rights (i.e., personal liberties) because of divorce, by assigning custody when there is absolutely no finding that the parent is unfit.

A statute that allows a judge to exercise "too much discretion in every case" or "unlimited discretion" is unconstitutional because it undermines the parent's fundamental right to make decisions regarding the care and custody of the child (i.e., because the parent's decision is no longer presumed to be in the child's best interest). *City of Chicago v. Morales*, 527 U.S. 41, at ¶26 (1999) www.versuslaw.com. The Best Interest of the Child Statutes do not identify what is forbidden and what is permitted, nor do they identify any "standard of conduct" at all for that matter. *Id.*, at ¶59. Therefore, they are "vague." *Village of Hoffman Estates v. Flip-Side*, 455 U.S. 489, 498 (1982). The Best Interest of the Child Statutes allow the courts broad discretion to take over a child's life like a thief and usurp parental rights. It is a statutory flaw when a statute "...places the best-interest determination solely in the hands of the judge." *Troxel v. Granville*, at 52.

The issue here is not who achieves/receives "custody." The issue is that, under Illinois law, a parent can be deprived

of their parental right to "custody" or responsibility of their child, temporarily or permanently, based solely on the whim of the courts, absent proven criminal violent acts. By definition, any statute that limits the decision-making capability (i.e., fundamental right) of a fit parent is, on its face, unconstitutional because no set of circumstances exists under which the statute would be valid.

In addition, a statute will be held unconstitutional if it is "breathtakingly broad." *Troxel v. Granville*, at 52. 750 ILCS 5/602 and related statutes that refer to the "best interest of the child" create an intolerable tension in the law because they allow the courts extremely broad latitude to make any "custody" decision, and almost any decision for that matter (e.g., what Petitioner can and cannot say to his daughter as per the Injunction), based on its own discretion, even if Petitioner adequately cares for his daughter, and without any showing that Petitioner is an unfit parent.

The Best Interest of the Child Statutes create significant interference on Petitioner's fundamental rights and implicate his daughter's welfare.

D. Troxel v. Granville is broad in its application.

Though *Troxel v. Granville* was a case involving the wishes of grandparents against the fundamental rights of parents, this Court was crystal clear in its broad statement that:

> "so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Id.*, at 67.

Additionally, this Court spoke broadly that "[t]he liberty interest at issue in this case -- the interest of parents in the care, custody, and control of their children -- is perhaps the oldest of the fundamental liberty interests recognized by this Court." *Id.*, at 66. This Court also broadly reaffirmed its decision in *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925) that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Troxel v. Granville*, at 66. Discussing *Prince v. Massachusetts*, 321 U.S. 158 (1944), this Court again continued with its broad confirmation "that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Troxel v. Granville*, at 66. Though never directly stated, this Court has forcefully implied that these decisions, starting "[m]ore than 75 years ago," apply in all parental situations. *Id.*, at 66. This Court has even broadly referred to the "decisional framework employed by the Superior Court directly contravened the traditional presumption that a fit parent will act in the best interest of his or her child." *Id.*, at 69.

This Court has broadly generalized that "[i]n light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Id.*, at 66. This Court has also summarized in broad terms that "[a]s we have explained, the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a "better" decision could be made." *Id.*, at 72.

Twice, this Court clearly characterized *Troxel v. Granville* as "nothing more than a simple disagreement between the Washington Superior Court and Granville concerning her children's best interests." *Id.*, at 67. However, the Appellate Court of Illinois disregarded Petitioner's assertion that cases like *Troxel v. Granville* and its Illinois counterpart *Wickham v. Byrne*, 199 Ill.2d 309 (2002) are the appropriate precedent. The Appellate Court of Illinois instead claimed that these decisions "do not apply to custody proceedings under the IMDMA" because they "addressed statutes that permitted third persons to petition for child visitation." (6a)

To counter what it considers "third person" precedent like *Troxel v. Granville* and its own *Wickham v. Byrne*, the Appellate Court of Illinois brazened an unpublished Supreme Court of Illinois decision *In re A.W.J.*, 197 Ill. 2d 492 (2001) which discusses which "nonparents" (i.e., grandparents) get custody of a child after the father killed the mother and the father later dies. *In re A.W.J.* clearly indicates that "the parental interests sought to be protected... are no longer at issue in this case because [the father] has died." *Id.*, at ¶21 www.versuslaw.com. The unpublished case that the Appellate Court of Illinois brandishes against *Troxel v. Granville* is about:

> "...a minor whose father killed his mother. While A.W.J.'s father was in pretrial custody, A.W.J.'s maternal grandmother filed a custody petition in the circuit court of Du Page County pursuant to section 601(b) of the Illinois Marriage and Dissolution of Marriage Act (the Act) (750 ILCS 5/601(b) (West 1996)). The petition was opposed by the paternal grandparents. The trial court granted custody to the maternal grandmother in a final order which contained Rule 304(a) language. The paternal grandparents appealed, and the

> appellate court affirmed (316 Ill. App. 3d 91). The father died while the appeal was pending. We granted leave to appeal. 177 Ill. 2d R. 315(a). The sole question on which the paternal grandparents sought leave to appeal is whether the maternal grandmother had standing to bring the petition." *Id.*, at ¶9.

Every case from this Court dealing with fit parents, children, and the best interest of the child standard contradicts the Appellate Court of Illinois's analysis (e.g., see *Stanley v. Illinois*, at 651; *Santosky v. Kramer*, at 753; *Griswold v. Connecticut*, at 495-496; *Quilloin v. Walcott*, at 255; *Parham v. J.R.*, at 602; *Bellotti v. Baird*, at 655-656; *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); *Prince v. Massachusetts*, at 166.)

E. A circuit court may not enjoin a fit parent's speech with his child based solely on the best interest of the child and absent a threshold showing of harm.

Freedom of speech, which is guaranteed by the First Amendment of the Federal Constitution as well as Article I of the Constitution of Illinois, protects the right of someone to communicate in ways that are unpleasant to others, without any justification for doing so. Individual rights of speech, especially to one's children, can be overridden only by a showing of a compelling state interest. The circuit court based its prior restraint, however, not on credible evidence of harm or danger or even the imminent risk of harm or danger, but on the flimsy ground (i.e., three statements explaining why Petitioner could not see his daughter as much as he used to anymore) of what the circuit court determined to be the "best interest of the child," which cannot withstand constitutional scrutiny. The Injunction does not even indicate a finding that Petitioner's daughter and/or Respondent have been harmed in any way. (18a). However, this is a constitutionally impermissible

infringement of Petitioner's substantive due process rights. *Troxel v. Granville,* at 66. Regardless of any statements Petitioner made to his daughter, this Court noted in *Parham v. J.R.*, at 603, that "[s]imply because the decision of a parent is not agreeable to a child or because it involves risks does not automatically transfer the power to make that decision from the parents to some agency or officer of the state."

In fact, in *Doe v Heck*, 327 F.3d 492 (7th Cir. 2003), the court implied that even corporal punishment is likely within the bounds of the fundamental right of parents:

> "In assessing the reasonableness of the defendants' actions in this case, we begin with the constitutional presumption that "fit parents act in the best interests of their children," Troxel, 530 U.S. at 68, and stress that unless government officials have evidence calling into question the fitness of a parent, there is "no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Id.*, at ¶69 www.versuslaw.com.

In upholding the circuit court's Injunction against Petitioner's speech with his daughter, the Appellate Court of Illinois disregarded its own opinion *Felzak v. Hruby*, No. 2-05-0848 (Ill.App. Dist.2 07/28/2006), issued not even four months earlier, that was directly on-point for ruling as unconstitutional a court order limiting the communication that a parent has with his children regarding visitation and a court case; instead, the Appellate Court of Illinois claimed that "Illinois courts have apparently not yet addressed the issue" (9a). However, *Felzak v. Hruby* was very clear that:

> "In this case, the trial court usurped defendants' power, as parents, to decide whether to discuss the outcome of the case with their daughter. The

> topics of conversation barred by the trial court involved both Katie's visitation with her grandmother and her parents' imprisonment, both of which concern her care and upbringing. As a result, we conclude that the court's order forbidding such discussion interfered with defendants' parental liberty interests as guaranteed by the fourteenth amendment. Such an intrusion will be justified only when the state has a compelling interest. (Citations omitted.)" *Id.*, at ¶73 www.versuslaw.com.

The Appellate Court of Illinois also ignored the 7th Circuit's high-profile case addressing the unconstitutional content-based restrictions of the distribution of video games in Illinois:

> "If controlling access to allegedly "dangerous" speech is important in promoting the positive psychological development of children, in our society that role is properly accorded to parents and families, not the State." *E.S.A. v. Illinois*, case no. 05 C 4265 (12/02/2005, affirmed 11/27/06).

Even the Supreme Court of Illinois has strongly asserted that altering a parent's custody and overriding the decision of a parent are significant interferences, indicating that a state may only intercede in a family relationship on behalf of a child if it has a compelling interest:

> "It is the role of parents to nurture their children and to influence and shape their children's character. As the United States Supreme Court has recognized, "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Prince v.

> Massachusetts, 321 U.S. 158, 166, 88 L. Ed. 645, 652, 64 S. Ct. 438, 442 (1944). This "preparation for obligation" includes the parents' determination of who will be instrumental in the development of their child's personality and character. Section 607(b) (1) allows the State to usurp the decisionmaking function of parents with respect to the relationships that their children will have. This decisionmaking function lies at the core of parents' liberty interest in the care, custody, and control of their children...
>
> The court reasoned that, even though "the State neither takes the minor out of the home nor alters the parents' temporary or permanent custody of the minor, the State nevertheless intercedes, on behalf of the minor, in the family relationship." R.G., 131 Ill. 2d at 344. Thus, the statutes "significantly interfere[ ] with the family relationship and can only be justified if the State has a compelling interest." R.G., 131 Ill. 2d at 344.
>
> Likewise, by allowing the State to override the decisions of parents regarding the upbringing of their children, section 607(b) (1) significantly interferes with the fundamental rights of parents." *Lulay v. Lulay*, at ¶63, ¶65-66.

The permanent Injunction was overly broad, in that it prevents Petitioner from exercising his fundamental rights – specifically his liberty interest in the care and control of his daughter and his right to speak freely to her. *Lily of the Valley Spiritual Church v. Sims*, 169 Ill. App. 3d 624, at ¶31-33 (1988) www.versuslaw.com; *Troxel v. Granville*, at 66-67.

CONCLUSION

In *Troxel v. Granville*, this Court found problematic the lack of a threshold showing of harm validating the state's interference in the parent's affairs. *Id.*, at 63. Also, because the state statute permitted any person to maintain a visitation petition solely on the basis of a child's best interests, the state was invested with unfettered discretion to award visitation premised on a single judge's opinion of which was the superior arrangement for the child. *Id.*, at 63.

The Best Interest of the Child Statutes place an impermissible, direct, legal obstacle between Petitioner and his child. As a result of the decisions of the Illinois courts, and without any showing of harm, Petitioner is now treated as an "inferior" parent (e.g., who has no decision-making authority, who only is "allowed" to "visit" with his daughter approximately 16% of the time, who is restricted in what he can and cannot say to her), while Respondent is now treated as a "superior" parent (e.g., who has full decision-making authority, who provides the permanent residence of the child 84% of the time, who may speak freely to her on any topic). This is not just minor interference by the state, but direct, significant, substantial, and absolute interference of a fundamental right. The concept of visitation, in and of itself, intrudes upon the fundamental right of parents to direct the care, custody, and control of their children. The Fourteenth Amendment requires that fit parents not stand on unequal footing with regards to their children. The state may not treat fit parents differently, no matter what classification scheme they use:

> "The Equal Protection Clause provides a basis for challenging legislative classifications that treat one group of persons as inferior or superior to others, (footnote omitted) and for contending that general rules are being applied in an arbitrary or discriminatory way. (footnote omitted) The

> portion of the Georgia statute at issue in this case applies equally to all parents residing in Georgia..." *Jones v. Helms*, 452 U.S. 412, 423-424 (1981). (Finding no equal protection violation.)

The Best Interest of the Child Statutes are applied in an arbitrary way and discriminatory toward "non-custodial," divorced parents without any showing of harm. The best interest standard, by itself, is inadequate to protect constitutional liberties. The Due Process Clause of the Fourteenth Amendment requires a threshold showing of harm before the best interest standard can be applied, as fit parents enjoy a presumption that their decisions regarding their children's best interests are correct. *Troxel v. Granville*, at 79-80. As the Judgment proves, Petitioner is an exceptional, committed parent and he is due the full protection of the Fourteenth Amendment:

> "When an unwed father demonstrates a full commitment to the responsibilities of parenthood by "[coming] forward to participate in the rearing of his child," Caban, 441 U.S., at 392, his interest in personal contact with his child acquires substantial protection under the Due Process Clause." *Lehr v. Robertson*, 463 U.S. 248, 261 (1983).

For all the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Dated this 1st day of June, 2007

Respectfully submitted,

Brian Lovett, *pro se*
1416 W. Wolfram St., #1
Chicago, Illinois 60657
(312) 529-1500
Petitioner

Appendix A: Supreme Court of Illinois decision, No. 103931 (March 28, 2007)

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFILED, ILLINOIS 62701
(217) 782-2035
March 28, 2007

Mr. Brian Lovett
1416 W Wolfram St., #1
Chicago, IL 60657-4117

No. 103931 - Brian Lovett, petitioner, v. Laurie Lovett, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on May 3, 2007.

Appendix B: Appellate Court of Illinois First District decision, Nos. 1-04-1602 and 1-05-0149 Consolidated (November 22, 2006)

Fourth Division
November 22, 2006

Nos. 1-04-1602 & 1-05-0149
(Consolidated)
IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF BRIAN LOVETT, Petitioner-Appellant, v.	Appeal from the Circuit Court of Cook County. No. 00 D 6725
LAURIE LOVETT, Respondent-Appellee.	Honorable R. Morgan Hamilton, Judge Presiding.

ORDER

Brian Lovett (Brian), the petitioner, filed a Petition for Dissolution of Marriage against Laurie Lovett (Laurie), the respondent, on April 28, 2000. During the trial, the parties presented testimony, numerous exhibits and oral arguments. The issues at trial included custody of the parties' minor child, visitation, child support, maintenance, characterization of property as marital or non-marital, division of marital property, disposition of debts, and attorneys fees. At trial, Brian also challenged the constitutionality of: (1) several sections of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) (750 ILCS 5/101 et seq.) (West 2002); (2) Rules of the Circuit Court of Cook County 13.3.1 (Mandatory Disclosure) and 13.3.2 (Proof of Income); and

(3) Illinois Supreme Court Rules 201 though 214 (166 Ill. 2d R. 201 through R. 214).

On June 1, 2004, the trial court entered a Judgment for Dissolution of Marriage, in which the court, inter alia, dissolved the marriage between the parties; granted Laurie sole care, custody, control and education of the parties' minor child; set forth a visitation schedule for Brian; established parenting rules for the parties; provided far the minor child's medical needs; and ordered Brian to pay Laurie guideline child support. The court ordered the sale of the marital residence with the net proceeds to be divided equally between the parties and assigned to Laurie certain jewelry as non-marital property. The court also ordered that Brian provide Laurie with copies of his federal and state income tax returns each year for as long as he has a duty to support and educate the parties' child. The court further denied Brian's constitutional challenges.

On June 11, 2004, the trial court granted Laurie's petition for a permanent injunction. In that order, the court stated that "[a] permanent injunction is entered preventing Brian Lovett from making my disparaging remarks about Laurie Lovett an further enjoining him from talking with [the parties' child] about the Judgment [for] Dissolution of Marriage, the appeal from that Judgment, or his alleged fight for [the child]." Brian appeals from both the Judgment for Dissolution of Marriage and the trial court's order entering a permanent injunction (No. 1-04-1602).

On August 5, 2004, Laurie filed a Petition to Modify Child Support. In the petition, Laurie alleged the occurrence of substantial changes in circumstances since the conclusion of the trial, including the minor child's acceptance into a mutually agreed upon private school and day care costs. Brian filed a response to the petition and a memorandum.

On August 23, 2004, Laurie filed a Petition for Interim Attorneys Fees and Costs for Defense of Appeal. In the

petition, Laurie sought an order requiring Brian to pay her attorneys fees and costs already incurred and to be incurred in defending the appeal. Laurie requested that the court withhold a portion of Brian's share of the net proceeds from the sale of the former marital residence. On December 4, 2004, Laurie filed a Supplemental Petition for Interim Attorneys Fees and Costs for Defense of Appeal. In his response to Laurie's petitions, Brian challenged the constitutionality of various sections of the IMDMA and requested a trial by jury. On December 15, 2004, the trial court entered an order denying Brian's request for a jury trial and all of his constitutional challenges, and awarding Laurie the child support and attorneys fees sought. Brian appealed from that order (No. 1-05-0149).

On March 24, 2005, this court entered an order consolidating both appeals and directing Brian to file a supplemental brief addressing the new issues not addressed in the original brief. In his supplemental brief on appeal, Brian contends that section 103 of IMDMA (750 ILCS 5/103)(West 2002)) is unconstitutional because it denies him the right to a jury trial in divorce proceedings; that the trial court abused its discretion in granting Laurie additional child support and attorneys fees; and that Laurie and her attorneys committed perjury in seeking the modification of child support. For the following reasons, we affirm the judgment of the circuit court.

On appeal, Brian first challenges the constitutionality of the following sections of the IMDMA: 602, 603, 604, 607, 609, 610, 506, 501(a), 503(g), 505, 507, 510(a), 510(e), 510(f), 513, 504, 501(c)(1), 503(j), 508, and any other statutes or sections referring to the "best interest of the child," child support, maintenance, or attorneys fees.

Brian first argues that the trial court's application of the "best interest of the child" standard unconstitutionally infringed upon his parental rights when he was not found to

be an unfit parent. However, our supreme court has explained that "custody proceedings under the Marriage and Dissolution of Marriage Act are guided by the overriding lodestar of the best interests of the child or children involved." In re A.W.J., 197 Ill. 2d 492, 497-98 (2001). Our supreme court has also held that when minors are involved in dissolution proceedings, "the court has the authority and the responsibility to act for the child's care, custody and support until it reaches majority," and "the court's primary concern obviously is not the wishes of the parents but rather the best interests of the child." "Sommer v. Borovic, 69 Ill. 2d 220, 233 (1977). Furthermore, the United States Supreme Court has held that "[t]he goal of granting custody based on the best interests of the child is indisputably a substantial governmental interest for purposes of the Equal Protection Clause." Palmore v. Sidoti, 466 U.S. 429, 433, 80 L. Ed. 2d 421, 104 S. Ct. 1879. Accordingly, we reject Brian's argument.

Brian, nonetheless, cites Troxel v. Granville, 530 U.S. 57, 147 L. Ed. 2d 49, 120 S. Ct. 2054 (2000), in support of his argument that as long as a parent is deemed fit, the trial court had no authority to interject itself into his relationship with his child. In Troxel, the United States Supreme Court held that a Washington state statute was unconstitutional, where the statute provided that any person could petition the state court for visitation at any time, and that the court was permitted to grant such visitation rights whenever it served the best interest of the child. The Supreme Court determined that the statute violated the substantive due process rights of the mother, where the statute permitted the child's paternal grandparents, following the death of the child's father, to obtain increased court-ordered visitation in excess of what the mother thought was appropriate, based solely on the trial court's disagreement with the mother that the child would benefit from such increased visitation. The Supreme Court noted that the trial court's determination was not founded on

any special factors that might justify the State's interference with the mother's fundamental right to make decisions concerning the rearing of her children. Troxel, 530 U.S. at 68-70, 147 L. Ed. 2d at 58-59, 120 S. Ct. at 2061-62.

Similarly, in Wickham v. Byrne, 199 Ill. 2d 309, 321-22 (2002), the Illinois Supreme Court held that sections 607(b)(1) and 607(b)(3) of the IMDMA (750 ILCS 5/607(b)(1), (b)(3) (West 2002)), providing for court-ordered grandparent visitation privileges, were facially unconstitutional because the statute violated a parent's due process right to make decisions concerning the care, custody, and control of his or her child without unwarranted state intrusion. Contrary to Brian's contentions, the decisions in Troxel and Wickham do not apply to custody proceedings under the IMDMA. Unlike the present case, the courts in Troxel and Wickham addressed statutes that permitted third persons to petition for child visitation irrespective of the parents' decision. Here, Brian filed a petition for dissolution of marriage and the trial court properly determined that the custody proceedings under the IMDMA were to be guided by the best interest of the child standard. See In re A.W.J., 197 Ill. 2d at 497-98. We note that Brian has not challenged the trial court's findings and determination that it was in the best interest of the child to have sole custody awarded to Laurie. Brian has therefore waived this issue on appeal. In re Marriage of Wolff, 355 Ill. App. 3d 403, 414 (2005).

Brian next argues that sections of the IMDMA that refer to child support, maintenance attorneys fees violate his due process and equal protection rights under the Federal and State Constitutions because these statutes subject him to different treatment than persons remaining in an intact marriage or unrelated to one another. However, Illinois courts have previously rejected similar arguments. In In re Marriage of Blaisdell, 142 Ill. App. 3d 1034, 1044-48 (1986), this court determined that the sections of the

IMDMA setting forth the guidelines for determining the amount of child support a noncustodial parent should pay did not violate a noncustodial parent's due process and equal protection rights. See also Kujawinski v. Kujawinski, 71 Ill. 2d 563, 580-82 (1978) (finding that provisions of the IMDMA which imposed support obligations on divorced parents did not deny equal protection to divorced parents vis-a-vis nondivorced parents).

Also, in Lane v. Lane, 35 Ill. App. 3d 276, 280-81 (1976), this court rejected the husband's claim that maintenance payments violated his right to equal protection under the Federal and State Constitutions. Further, this court has held that various provisions of the IMDMA allowing attorneys fees do not violate a party's due process rights. See In re Marriage of Beyer, 324 Ill. App. 3d 305 (2001); Kaufman, Litwin and Feinstein v. Edgar, 301 Ill. App. 3d 826 (1998). We find no reason to depart from the aforementioned decisions, and therefore reject Brian's contentions.

Brian next argues that the mandatory disclosure and proof of income rules of the circuit court of Cook County (Rules of the Circuit Court of Cook County 13.3.1 and 13.3.2), and the discovery rules set forth in Illinois Supreme Court Rules 201 though 214 (166 Ill. 2d R. 201 through R. 214) are unconstitutional. Brian argues that pursuant to these rules, he was ordered to annually provide federal and state income tax returns which amounted to "compulsory production" of "his private papers" in violation of his rights under the Fourth and Fifth Amendments to the United States Constitution. However, our supreme court has held that discovery interrogatories do not infringe on a party's constitutional rights against unreasonable search and seizure or any other constitutional guarantee. People ex rel. Terry v. Fisher, 12 Ill. 2d 231, 240 (1957). In addition, Brian has presented no argument or case law persuading us that civil

discovery procedures should be subject to the type of constitutional analysis utilized in unreasonable search and seizure criminal cases. See City of North Chicago v. North Chicago News, Inc., 106 Ill. App. 3d 587, 593 (1982).

Brian next contends that the trial court violated his procedural due process rights by issuing a permanent injunction without providing him with sufficient notice and a meaningful opportunity to be heard. Procedural due process claims concern the constitutionality of the specific procedures employed to deny a person's life, liberty, or property interest. TRI-G, Inc. v. Burke, Bosselman & Weaver, Nos. 99584, 99595, slip op. at 17 (June 22, 2006). Our supreme court has explained that the requirement of due process is met by having an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights. TRI-G., Inc., Nos. 99584, 99595, slip op. at 17. The fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. TRI-G. Inc., Nos. 99584, 99595, slip op. at 17.

Applying these principles to this case, it is clear that Brian was not denied procedural due process. The record shows that the trial court conducted a hearing in which both parties presented testimony and closing arguments. In addition, Brian did not request a continuance or object to the hearing. Brian also argues that the trial court erred by granting a permanent injunction where there was no showing of actual or substantial injury.

In Laurie's emergency petition for temporary restraining order and permanent injunction and her affidavit, she stated: "I believe [the child's] mental, moral, and emotional health are seriously endangered by remarks such as Brian is making

to [the child] and by his threat to continue to make such remarks to [the child] for the rest of his life." Following the hearing, the court found that Brian admitted the following: "a. That he has told [the child] that Laurie is taking her from him; b. That he has told [the child] that he was going to have less time with her; c. That he has told [the child] that her mother lies; d. That he has told [the child] that people associated with her mother are bad." The court also noted it "reviewed the emergency petition for temporary restraining order and permanent injunction, [and] has heard the testimony of both parties." The court found that Brian's admissions were "enough to issue a permanent injunction permanently enjoining [Brian] from making any disparaging remarks to [the child] about Laurie, from discussing with [the child] the terms of the judgment, the appeal, or any aspect of [his] alleged fight for her. This is a very serious thing."

Brian asserts that the trial court was precluded from entering a permanent injunction absent a showing of actual or substantial showing and that the injunction hindered Brian's right to speak freely to his child. Although Illinois courts have apparently not yet addressed the issue, several other states have noted that the best interest of the child can be a compelling state interest justifying a prior restraint of a parent's right of free speech. See In re Marriage of Geske, 642 N.W. 2d 62, 67-68 (Mn. 2002) (father enjoined from further publishing names or images of parties' children in the media where further publication could cause a reasonable probability of injury and the injunction was not an impermissible prior restraint on speech); Schutz v. Schutz, 581 So. 2d 1290, 1292-93 (Fla. 1991) (order requiring mother to say positive things about father was in the best interests of the children and, at the very least, in furtherance of "substantial" state interest and not a violation of mother's First Amendment right to free expression); Dickson v. Dickson, 12 Wash. App. 183 (1974) (father enjoined from

saying that mother was still his wife and that she was insane; court recognized that such statements interfered with children's well being, and injunction was affirmed, as modified, against father's assertion of First Amendment rights); Stephanie L. v. Benjamin L., 158 Misc. 2d 665 (N.Y. 1993) (court noted that it has the power to enjoin parents from making statements to children that are not in their best interests, such as where the proposed injunction is against disparaging a child's guardian or parent, but court declined to exercise that power to prohibit a father from disclosing to child that her mother had cancer).

Accordingly, we conclude that the injunction in this case was properly entered based on the best interest of the child and does not infringe on Brian's right to free speech.

Brian next contends that Laurie and her attorneys committed perjury by denying that an agreement over personal property was reached between Brian and Laurie. Brian argues that this alleged perjury led the court to mistakenly award Laurie personal property, which included a trunk and a picture of a flower.

The record shows that Brian admitted numerous exhibits relating to the parties' discussions about the division of personal property. Brian argued that the parties reached a final agreement relating to personal property division which was set forth in "Exhibit B." However, the record also includes an exhibit, in which Laurie's attorney stated that "an agreement between [Brian] and Laurie was never reached regarding the division of personal property and therefore, there is no 'proper Exhibit B' [to the Agreed Interim Order]." The trial court found that the division of personal property was an issue for trial and subsequently awarded Laurie the trunk and picture in question. We find that Brian has failed to show that the trial court's determination was erroneous. We further note that while the trial court may find a party in contempt of court for perjury, Brian has failed to make any

showing that Laurie and her attorneys made false representations, that Laurie and her attorneys knew of their falsity when they made them, and that Laurie and her attorneys made them with willful and malevolent intent of assailing the dignity of the court or interfering with the procedure and due administration of justice. See People v. Davis, 156 Ill. App. 3d 35, 37-38 (1987); People v. Page, 73 Ill. App. 3d 796, 799-801 (1979).

Brian next contends that Laurie and her attorneys committed fraud by entering into an agreement with Brian regarding child support when "they had no intention of honoring their part of the agreement." Brian argues that in February 2002, the parties, through their attorneys and with the assistance of their child's guardian ad litem, orally agreed that neither party would seek child support during the pendency of their case. Brian argues that Laurie breached that agreement by subsequently refusing to sign the Agreed Interim Order unless the stipulation regarding child support was removed. However, under the parol evidence rule, where an instrument appears complete, certain, and unambiguous, then parol evidence of a prior agreement is inadmissible to contradict the terms of the written agreement. Basu v. Stelle, 237 Ill. App. 3d 113, 117 (1992). Furthermore, this court has held that, under section 502(f) of the IMDMA (750 ILCS 5/502(f) (West 2002)), parties may not by agreement waive the right to challenge child support provisions in settlement agreements and court orders. In re Marriage of Sheetz, 254 Ill. App 3d 695, 698-99 (1993). Under section 502(b) of the IMDMA (750 ILCS 5/502(b) (West 2002)), a court is not bound by such agreements regarding child support. In re Marriage of Hightower, 358 Ill. App. 3d 165, 171 (2005).

Brian next contends that the trial court ignored evidence that Laurie dissipated assets. Dissipation is generally defined as the use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time

that the marriage is undergoing an irreconcilable breakdown. In re Marriage of Cerven, 317 Ill. App. 3d 895, 900 (2000). Whether a given course of conduct constitutes dissipation depends upon the facts of each case. Cerven, 317 Ill. App. 3d at 900. The spouse charged with dissipation has the burden of proving, by clear and convincing evidence, how the marital funds were spent. In re Marriage of Gurda, 304 Ill. App. 3d 1019, 1026 (1999). Based on the credibility of the witnesses, the trial court decides if the funds were spent for legitimate family expenses, which were necessary and appropriate. Gurda, 304 Ill. App. 3d at 1026. The trial court's determination regarding dissipation will not be reversed on appeal absent an abuse of discretion, which occurs only when no reasonable person could adopt the trial court's view. Cerven, 317 Ill. App. 3d at 900.

Here, Brian argues that he presented clear evidence that Laurie dissipated approximately $29,000 in assets by charging sums of money for restorative, cosmetic dental work, "out-of-plan'" therapy, and clothing, towels and bookshelves. Brian also argues that he did not receive any reimbursement from Laurie for contributions he was ordered to make to Laurie's flexible spending health care plan. Contrary to Brian's contentions, the record shows that the trial court considered Brian's testimony and claims of dissipation, and found no dissipation on each claim. We find that Brian has failed to show that the trial court's determination constituted an abuse of discretion.

Brian next contends that the trial court should have awarded him the marital home because he presented evidence that all funds used to acquire and improve the marital home were traceable to his personal checking account. Before disposing of property upon a dissolution of marriage, the trial court must first classify the property as marital or nonmarital. In re Marriage of Hagshenas, 234 Ill. App. 3d 178, 186 (1992). A reviewing court will not disturb

the trial court's classification unless it is contrary to the manifest weight of the evidence. Hanshenas, 234 Ill. App. 3d at 186.

Pursuant to section 503(b)(1) of the IMDMA (750 ILCS 5/503(b)(l) West 2002)), there is a rebuttable presumption that all property acquired by either spouse after the marriage and before a judgment of dissolution of marriage, including nomarital property transferred into some form of co-ownership between the spouses, is marital property. A party may overcome this presumption by showing by clear and convincing evidence that the property falls into one of the categories listed in section 503(a) of the Act (750 ILCS 5/503(a) (West 2002)). Hagshenas, 234 Ill. App. 3d at 186.

Property designated as nonmarital under section 503(a) may still be presumptively transmuted into marital property by an affirmative act of the contributing spouse, such as placing nonmarital property in joint tenancy or some other form of co-ownership with the other spouse. In re Marriage of Gattone, 317 Ill. App. 3d 346, 352-54 (2000). This raises the presumption that the contributing spouse made a gift of the property to the marital estate. Gattone, 317 Ill. App. 3d at 352-54. The contributing spouse may overcome this presumption by presenting clear and convincing evidence that he or she did not intend to make a gift of the nonmarital property. Gattone, 317 Ill. App. 3d at 352-54. Any doubts as to the nature of the property are resolved in favor of finding that the property is marital. Gattone, 317 Ill. App. 3d at 352-54.

Here, Brian testified that nearly one year after the marriage, he purchased the marital home. While Brian testified that he did not consider the purchase of the marital home to be a gift to the marriage, the trial court rejected his testimony and classified the home as marital property. We find that this classification was not contrary to the manifest weight of the evidence. While Brian testified that he made

the down payment for the marital home with his nonmarital funds, both parties signed the real estate sales contract, the earnest money came from a bank account in both parties' names, the name of both parties is on the title to the home, the parties took title as tenants by the entirety and Laurie signed the closing documents for both herself and Brian. Based on these factors, we find that Brian failed to present clear and convincing evidence to overcome the presumption that the marital home was a gift to the marriage.

Brian next contends that the trial court should have awarded him certain jewelry that he purchased for Laurie, including an engagement ring, wedding band, and earrings which included family heirloom diamonds. Brian argues that the jewelry is titled in his name, that he did not intend to make a gift to Laurie and that the jewelry was specifically for Laurie's use only while the parties were married. The record shows that the trial court did not believe Brian's statements and awarded the jewelry to Laurie. It is within the trial court's province to determine the credibility of witnesses. In addition, there is a presumption that transfers between husbands and wives are gifts. In re Marriage of Marx, 281 Ill. App. 3d 897, 902 (1996). We therefore find that the trial court's determination was not against the manifest weight of the evidence.

In his supplemental brief, Brian contends that section 503 of the IMDMA is unconstitutional where it denied him the right to a jury trial in divorce proceedings. Section 503 provides: "There shall be no trial by jury under this Act." 750 ILCS 5/503 (West 2002). Our supreme court has held that the constitutional right to trial by jury applies only to actions known to the common law and is not a matter of right in equity proceedings. Fisher v. Burgiel, 382 Ill. 42, 54-55 (1943). The right to a jury trial in divorce proceedings is statutory. Caplaw v. Caplaw, 255 Ill. App. 389 (1930). Section 103 specifically precludes the right to a jury trial

(750 ILCS 5/103)(West 2002)) and, therefore, Brian was not entitled to a jury trial in his divorce proceedings.

Brian next contends that the doctrine of res judicata precluded Laurie from filing her Petition to Modify Child Support where the trial court previously addressed matters regarding the education of the parties' child.

Res judicata bars the relitigation of an issue between the same parties after a final judgment on the merits has been rendered by a court of competent jurisdiction. In re Marriage of Comers, 303 Ill. App. 3d 219, 225-26 (1999). The original judgment awarding child support payments is res judicata only so long as there is no change in the circumstances underlying the decree. In re Marriage of Winters, 160 Ill. App. 3d 277, 285 (1987). The decision to modify the child support award rests with the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. In re Marriage of Winters, 160 Ill. App. 3d at 285.

Contrary to Brian's assertion, res judicata does not apply in this case. In her Petition to Modify Child Support, Laurie alleged that there has been a substantial change in circumstances since the trial which warranted a modification of Brian's child support obligation. Laurie specifically stated that in March 2004, the parties' child had been accepted into a private school that both parties agreed upon. Laurie stated that she has insufficient funds to pay the child's entire private school tuition and after-school day care expenses. Laurie requested that the trial court order Brian's child support obligation to deviate above the guidelines to include his 50% contribution to the child's private school and day care expenses. While Brian notes that the child's education was referred to during the trial, the Judgment for Dissolution of Marriage did not address the child's education and day care expenses. In addition, since the facts alleged in Laurie's petition occurred since the trial, the trial court was not barred

by res judicata from considering them in relation to the propriety of the previous child support determination.

Brian next contends that the trial court erred by granting Laurie's Petition for Interim Attorneys Fees and Costs for Defense of Appeal, where the Judgment for Dissolution of Marriage previously addressed the issue. Contrary to Brian's contention, the Judgment for Dissolution of Marriage did not address attorneys fees and costs related to Brian's appeal. Rather, the Judgment provided: "That except for the interim attorneys' fees and costs awarded to the Wife during the course of this litigation for which the Husband shall not be reimbursed, each party shall pay their own attorneys' fees and costs incurred in connection with this case without any further contribution from the other party." The Judgment did not address future attorneys fees and costs related to this appeal.

Brian next contends that the trial court erred by granting Laurie's Petition to Modify Child Support and Petition for Interim Attorneys Fees and Costs for Defense of Appeal. Brian argues that Laurie had been receiving child support, was awarded jewelry and proceeds from the sale of the marital residence, and had listed assets on her disclosure statement that could have been used to pay their child's educational expenses and Laurie's attorneys fees. However, where this evidence was before the trial court, Brian has failed to show that the court's child support determination and award of attorneys fees was an abuse of discretion in this case.

Brian lastly contends that Laurie and her attorneys committed perjury in seeking additional child support. Brian argues that Laurie alleged in her Petition to Modify Child Support that she had "insufficient funds to pay %100 of [the child's] private school and day time child care expenses herself," but that her disclosure statement indicated that she had sufficient funds to pay the amount allegedly owed for

their child's school tuition. We find Brian has failed to make any showing that Laurie and her attorneys made false representations, that Laurie and her attorneys knew of their falsity when they made them, and that Laurie and her attorneys made them with willful and malevolent intent of assailing the dignity of the court or interfering with the procedure and due administration of justice. See Davis, 156 Ill. App. 3d at 37-38; Page, 73 Ill. App. 3d at 799-801.

For the above stated reasons, we affirm the judgment of the circuit court of Cook County.

Affirmed.

NEVILLE, J., with CAMBELL, J., and MURPHY, J., concurring.

Appendix C: Circuit Court of Cook County, Illinois decision, No. 00 D 6725 (June 11, 2004)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

IN RE THE MARRIAGE OF:

BRIAN LOVETT,
v. No. 00 D 06725
LAURIE LOVETT,

ORDER

This matter having come in to be heard on the Emergency Petition for Temporary Restraint Order and Permanent Injunction of Laurie Lovett; after notice, both parties having appeared in open court; the Petitioner, Brian Lovett ("Brian"), having appeared pro se and the Respondent, Laurie Lovett ("Laurie") having appeared through her attorneys, the court having reviewed the petition and having heard the testimony of both parties;

The court finds that Brian admitted the following:

a. That he has told Samantha that Laurie is taking her (Samantha) from him;

b. That he has told Samantha that he was going to have less time with her;

c. That he has told Samantha that her mother lies;

d. That he has told Samantha that people associated with her mother are bad.

Wherefore, it is hereby ordered:

A permanent injunction is entered enjoining Brian Lovett from making any disparaging remarks about Laurie Lovett and further enjoining him from talking to Samantha

about the Judgment of Dissolution of Marriage, the appeal from that Judgment or his alleged fight for Samantha.

Atty. No. 91797
Name: Dorene Marcus – Davis Friedman
Atty. For: Laurie Lovett
Address: 140 S. Dearborn
City/State/Zip: Chgo, Il 60603
Telephone: 312-782-2220

ENTERED
JUN 11, 2004
JUDGE VERONICA B. MATHEIN
Circuit Court 1721
s/_____

Appendix D: Circuit Court of Cook County, Illinois decision, No. 00 D 6725 (June 1, 2004)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION

IN RE THE MARRIAGE OF:

BRIAN M. LOVETT,
Petitioner,
and 00 D 6725
LAURIE LOVETT,
Respondent.

JUDGMENT FOR DISSOLUTION OF MARRIAGE

This cause coming to be heard on the Petition for Dissolution of Marriage of the Petitioner, BRIAN M. LOVETT, (hereinafter referred to as "the Husband" or "the Father"), appearing in his own proper person and PRO SE, and the Respondent, LAURIE LOVETT, (hereinafter referred to as "the Wife" or "the Mother"), appearing in her own proper person and by her attorneys DORENE MARCUS and DAVID C. AINLEY, of Davis Friedman Zavett Kane MacRae Marcus & Rubens, and this cause having been assigned for contested trial, and the parties having identified the following issues as contested:

1. Custody
2. Visitation
3. Child support
4. Maintenance
5. Dissipation
6. Characterization of property as marital or non-marital

7. Division of marital property

8. Disposition of debts

9. Attorneys fees

10. Husband challenges the constitutionality of the following statutes: 750 ILCS sections 5/602, 5/603, 5/604, 5/607, 5/609, 5/610, 5/506, 5/501(a), 5/503(g), 5/505, 5/507, 5/510(a), 5/510(e), 5/510(f), 5/513, 5/504, 5/501(c)(1), 5/503(j), 5/508 and any other best interest, child support, maintenance or attorneys fees statute or section

11. Husband challenges the constitutionality of Cook County Circuit Court Rules 13.3.1 and 13.3.2

12. Husband challenges the constitutionality of Illinois Supreme Court Rules 201 through 214

And the Court having heard testimony in open Court of all witnesses in support of the allegations contained in the Petition for Dissolution of Marriage, and the Court having considered all the evidence, including all exhibits admitted into evidence and any stipulations of the parties, and now being fully advised in the premises the Court finds as follows:

1. That this Court has jurisdiction of the parties and of the subject matter.

2. That the Petitioner BRIAN M. LOVETT was domiciled and residing in the County of Cook, State of Illinois, at the time the Petition for Dissolution of Marriage was filed and has maintained a domicile and residence in the County of Cook, State of Illinois, for ninety (90) days and more next preceding the making of the findings.

3. That the parties were married on August 31, 1997 and the marriage is registered in Tarrytown, New York.

4. That one child was born to the parties as a result of their marriage, namely SAMANTHA LOVETT, born

November 13, 1999. No children were adopted by the parties and the Wife is not now pregnant.

5. That without cause or provocation by the Petitioner or by the Respondent irreconcilable differences have arisen between the parties which have caused the irretrievable breakdown of the marriage. Attempts to reconcile have been unsuccessful, and future attempts to reconcile would be impracticable and not in the best interest of the family, and that the parties separated April 28, 2000 (when the child was five months old) and have lived separate and apart and not as husband and wife since that time.

6. That the Wife's maiden name is WEISSBERGER.

7. That by and through an attorney the Husband filed a verified Petition for Dissolution of Marriage on April 28, 2000 thereby submitting himself to the jurisdiction of the Court. In this Petition the Husband alleges among other things that he "is employed as a strategy manager in the computer field," and "earns sufficient income to be self sustaining"; that he "is a fit, proper and the appropriate party to have care, custody, control and education of the minor child. Alternatively, under specific circumstances, joint custody of the minor child would be appropriate." At the time this Petition was filed SAMANTHA was five (5) months old. In his prayer for relief the Husband requests that he "be granted the temporary and permanent care, custody, control and education of the minor child or, under other specific circumstances, that the parties be awarded joint custody."

8. That in his opening statement the Husband claimed the following: that the Wife committed fraud when she said she would contribute her salary if the Husband did the same, and then the Wife did not contribute her salary except for $1,400.00 for the first 14 months of the marriage; that the Wife contributed 47% and the Husband contributed 100%; that the Wife would not tell the Husband where the

$53,045.00 went; that the parties lived off the Husband's non-marital funds; that the Wife funneled money to her New Jersey family; that the Wife promised that money would be returned; that the Wife broke her promise; that the Wife's primary concern and loyalty was to her family in New Jersey; that the Wife physically abused the Husband; that the Wife tried to put a wedge between the Husband and Samantha; that the Wife's attorney committed and helped the Wife commit fraud.

9. That in his opening statement the Husband also claimed that the statutes he is challenging are unconstitutional on their face and as applied because, for example, they award parenting time and/or assign guardians and evaluators in violation of his fundamental right to due process and equal protection and/or they violate his family liberty interests to the custody, care and control of Samantha, etc.

10. That also in his opening statement the Husband claimed that the Rules of the Circuit Court of Cook County and the Supreme Court Rules he is challenging are unconstitutional only as applied in divorce proceedings on the grounds of due process violations, involuntary servitude, and they constitute a public taking for a private use.

11. That in his opening statement the Husband seeks to have the referenced statutes and rules declared unconstitutional as violations of the Husband's fundamental rights to his child and to his property.

12. That in his opening statement the Husband states that he is seeking the following: equal time with Samantha; a finding that there is no authority to award the Wife child support; no child support from the Wife; each parent to provide for Samantha while Samantha is in the care of that parent; Samantha's education and health care to be paid 50/50 by the parties; no maintenance to the Wife; no contribution to the Wife's attorneys fees. (According to the

Husband the Wife has a high salary and the Wife has significant assets; the Wife is readily employable and financially able to meet her contractual commitments, and the Wife has not been economically injured as a result of the marriage. The Husband claims further that the standard of living enjoyed during the marriage was based on his salary and his pre-marital assets which allowed the Wife to waste her own assets and filter them to her New Jersey family.)

13. That in his opening statement the Husband referred to an agreed order that he states identified future income and expenditures would be deemed equivalent in value as the basis for a finding that the Wife should not be awarded maintenance or attorneys fees based on the Wife's inability to support herself, and the Husband stated that he owes no duty to the Wife after the divorce.

14. That in his opening statement the Husband cites Troxel v. Granville (2000), 530 US 57,67, to support his contention that the only relevant issue with fit parents is the separation of assets and that rights to children continue as fundamental rights absent criminal conviction. According to the Husband on the issue of child support each parent stands in the same relation to the child as before the divorce and both parents owe a duty to reasonable support and food, and you cannot treat parents in an intact family different than parents in a non-intact family. The Husband claims that the child support statute has no economic basis. The Husband stated that he was ordered to pay the Wife temporary maintenance and that there is no economic basis for this and that the payment of maintenance to the Wife is not rationally related to the initially intended purpose. Regarding the payment of attorneys fees the Husband claims that the State cannot treat spouses or ex-spouses differently as there has been no showing of fault, tort, or compensable injury or damages.

15. That in his opening statement on the issue of mandatory disclosure in discovery the Husband claims that this requirement is prohibited by the 4th Amendment to the Federal Constitution absent probable cause of something illegal, and also by the 5th Amendment which states that one cannot be compelled to be a witness against oneself. According to the Husband such mandatory disclosure constitutes an unauthorized fishing expedition. The Husband states that in this case private parties' books and papers are to be used against the Husband to extort property. The Husband states that the outcome must be fundamentally fair. The Husband raises the question, "Who controls my money and the quality of my relationship with my offspring? Me or the State?"

16. That the Husband lives at 600 W. Surf, Unit 4, Chicago, Illinois.

17. That the Husband testified that it is in Samantha's (hereinafter referred to as "the Child") best interest to keep the current parenting agreement entered 3-26-2002 in place because Samantha has no adjustment problems and she has been thriving over the past 15 months. Husband's Exhibit A, a five page document called AGREED INTERIM ORDER, was admitted into evidence. According to paragraph C of the findings of this order, "The parties, their counsel and the Child's Representative, with the assistance and recommendations of the Honorable Veronica B. Mathein, have reached an Interim Agreement, which they desire be reduced to writing as an Order of Court, regarding certain issues including final allocation of personal property and division of personal checking accounts, and parenting time for each parent for the time period between the entry of this Order until Dr. Alan P. Childs completes his written evaluation pursuant to Section 5/604(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/604(b))". And, according to paragraph D of the findings of

this order, "The parties' pending Petitions are withdrawn without prejudice and the terms and provisions of the parties' Interim Agreement are specifically without prejudice to either party and are not to be construed in any way against or in favor of either party or either party's right and ability to parent their daughter."

18. That Husband's Exhibit A was prepared by Jacalyn Birnbaum, Child Representative, and signed by the Wife's attorney Dorene Marcus, the Husband's attorney Michael S. Sabath, and the Child Representative, but it was not signed by either party, and all but one modification to the proposed agreed order were initialed by all three attorneys, and that one modification was not initialed by the Husband's attorney.

19. That the Husband testified that the Wife does not show unwillingness to encourage a close relationship between the Father and the Child; that it is imperative that he continue to be an active parent in the Child's life; that the Mother creates a dangerous risk to the Father and Child relationship; that he is concerned that the Mother's actions attempt to alienate the Child from him; that during the case the Mother seeks to limit his time with the Child; that the Mother sought to return to the East Coast with the Child where the Mother's family lives as often as possible; that the Mother is laying the groundwork for sole custody and removal; that the Wife's Petition to Remove was filed and not withdrawn and that the Father and Child relationship will suffer if there is removal.

20. That the Husband testified that it is not in the best interest of the Child for the Child not to be with the Father 50% of the time as that would disrupt the Child's normal routine and decrease stability in the Child's life, interfere with the Father's parenting time and adversely affect the Father's relationship with the Child, affect the benefit to the Child of the relationship, devastate the relationship between the Father and the Child, and that the Mother's actions are

fabricating, harassing and intimidating and "interfere [with his] personal liberty."

21. That regarding the 750 ILCS 5/602 Best interest of the child factors the Husband testified as follows:

Factor 1: "I want joint custody and [the Mother] wants sole residential custody and minimum involvement by the [Father]." To support his position the Father referred to Husband's Exhibit BBBBB, the Wife's Petition to Modify Temporary Visitation, and stated that the Wife's proposed schedule would have given him 18% of the Child's time and the Mother 82% of the Child's time. The Husband testified that the Wife "falsely tried to make Dr. Childs believe that she supported a strong relationship between [the Father] and the Child." The Husband relied heavily on passages in Husband's Exhibit H (Child's Exhibit I), Dr. Alan P. Childs' (hereinafter referred to as "Childs") Custody Evaluation dated June 12, 2002. The Husband also relied heavily on the entries he made in Husband's Exhibit U titled Brian Lovett's Log of Parenting Activities.

For 1-26-2002 the Husband wrote in Exhibit U "Laurie hit me 5 times when I arrived home at 3:30 AM and refused to let me go downstairs/go to sleep for 1 hour. She kept blocking the stairway, and would push me back." According to Husband's Exhibit H (page 6) at his initial interview with Dr. Child's on 3-19-2002 the Husband "noted that a couple of months ago (January 2002), Ms. Lovett did push him a couple of times, but it did not hurt."

For 2-10-2002 the Husband wrote in Exhibit U "I woke up at 7:30 AM when I heard Samantha's voice talking (this was my day). I went into her room, but she wasn't there. I then realized that she was talking in Laurie's room (Laurie had the speaker that evening, and I didn't hear Samantha get up). I went to Laurie's room, but she had locked the door. I knocked on the door and reminded Laurie that we had agreed it was my day. She screamed at me to go away. I continued

to knock on the door for approximately 5 minutes - she continued to scream at me to go away and refused to let me see Samantha (she also refused to tell me why she was not letting me get her). Finally, she came and unlocked the door to scream at me to go away again, and then slammed the door. She stood by the door and refused to let me come in, while I continued to knock at the door. After another 5 or so minutes had gone by of me knocking and her screaming to go away, I pushed the unlocked door and was able to get in. She immediately came up to me and hit me twice, and then tried to push me outside the room. I did not push back. She then scream (sic) that she was calling the police, grabbed Samantha out of bed, and called 911. I then left the room and went upstairs to get on the phone as well. (NOTE: When I left the room, the door handle was fine/operational). I got on the phone to try and explain what was going on, but the police said they were on their way. Laurie came upstairs and waited by the window, holding Samantha, and looking for the police. Samantha kept saying "Daddy hold," and finally Laurie put her down, and she came to me to be held. The police arrived and asked me to step back, at which time I went to a chair away from the door to sit and wait. I tried to explain that Laurie had agreed that this was my day and she was keeping Samantha from me, but the police said that I should just leave the house and not come back until tomorrow to defuse the situation. So, I put on my coat and shoes and immediately left the house for the day. At approximately 4:15 PM, I asked a friend to call Laurie at home and ask if I could come in for 15 minutes to pack my bag for the week (I needed to go out of town, and needed to get clothes and my computer). She refused to let me in. I called her again at approximately 6:30 PM to ask again if I could come in for 15 minutes, which she refused. So, I called 911, explained the situation, and asked them to escort me into the house, which they did. Samantha was extremely excited to see me and ran to give me a big hug. As I went to

release the hug so I could get out of the house, she didn't want to stop hugging me. I put her down and left the house, and slept at a friend's house." (At 6:30 pm the door handle appeared broke.)

The Husband testified that the Wife put him under stress by verbal and emotional abuse in front of and outside the presence of the Child; that the Wife discouraged the Child from speaking to him on the phone; that the Wife locked him out of the house; that the Wife concealed the Child from him; that the Wife threatened to conceal the Child from him; that the Wife stole money and gave it to her New Jersey family.

Referring to the entry he made in Exhibit U dated "11/16/99 – 4/30/00" (all one entry) the Husband testified that the Mother only let him feed the Child with a bottle a couple times per month because the Mother "would say she didn't like pumping (her milk), and that it was a bonding experience for her, and wanted to feed her directly". (The Mother breastfed the Child.)

Referring to the entry he made in Exhibit U for 6-4-2000 the Husband testified that he was to have time with the Child in the morning so that his parents could see the Child and the Wife recalled that her job was having a family day and she wanted to take the Child to work and use the family car.

Referring to the entry he made in Exhibit U for 6-8-2000 the Husband testified that the Mother called him to say it was her night and that she had had the Child all day 6-7-2000, and then the Mother called again and wanted to see the Child; that he played with the Child at the lake; and that the Mother called him 11 times.

Referring to the entry he made in Exhibit U for 6-12-2000 the Husband testified that the parties do not agree on the Child's bedtime; the Mother prefers 9:00 pm and the Father prefers 8:00 pm.

Referring to the entry he made in Exhibit U for 6-15-2000 the Husband testified that he took the Child to the Mother at 6:00 am and that he was out of the shower at 6:30 am and that he had heard the Mother tell the pediatrician that the Child only feeds 7-8 minutes on each side. This testimony related to the Husband writing, "Laurie screamed at me that Samantha 'never' eats the second side properly because she doesn't get to take a 'few minutes' nap between sides (i.e., because I changed her diaper and took her upstairs to play for 30 minutes, Samantha wasn't breastfeeding properly). Laurie has never brought this up before. I believe she said this to try and stop the time I spend with Samantha in the morning (so that she can spend more time with her.)" etc.

Referring to the entry he made in Exhibit U for 1-15-2001 the Husband testified that the Mother was not home, the Child wanted dinner, the Father fed the Child before the Mother arrived home, the Mother told the Father to stop feeding the Child when she learned by phone that the Child was having dinner, when the Mother arrived home the Mother called the Father a f---er in front of the Child.

Referring to the entry he made on Exhibit U for 1-16-2001 the Husband testified that it was his day to have the Child in the morning and that the Mother would not give him the baby monitor the night before.

Referring to the entry he made on Exhibit U for 1-27-2002 the Husband testified that the Child fell twice in the evening and bumped her head, once on the sidewalk and once she hit her head on the Father's headboard when she played on the bed, and that the Mother video recorded the bruise (red spot). The Father stated that the Child was fine but the Mother wanted to take the Child to the emergency room and the Mother wanted to show the neighbor the red bumps.

Referring to the entry he made on Exhibit U for 2-2-2002 the Husband testified that at 8:00 am he took the Child to his room to snuggle and that the Mother came to the Father's room and screamed at him in front of the Child and the Mother video recorded that the Father did not feed the Child; it was the Father's morning; the Mother told the Father to go away when it was the Father's time; the Mother would not go away when it was the Father's time.

Referring to the entry he made on Exhibit U for 2-11-2002 the Husband testified that he went to Court to file for an Emergency Order of Protection which was denied. The Father testified that the Mother had double-locked the front and back door and he had entered the house through the basement. The Father stated that the Mother claimed the Court had evicted him and the Mother called 911. The Father stated that he got the video camera and he sat and waited for the police; the Mother had no Court order and he did not agree to leave. The Father stated further that the Mother packed and left the house with the police and the Mother called him at 9:00 pm to let the Child say goodnight.

The Father testified that the on 2-12-2002 the Mother kidnapped the Child from the Father in violation of a Court order. (No such order was ever produced.) According to the Father the parties had difficulties with the Mother wanting to remove the Child from the State, and the Mother left with the Child on 2-12-2002 and went out of state. The Father stated that he did not know the Mother had left Illinois; he did not hear from the Mother again for 6 days, until 2-18-2002 when the Mother called him to give him the phone number on the advice of her attorney. The Father testified that he thought the Mother was staying in New Jersey with her parents when he had no contact with the Child. According to the Father he next saw the Child on 2-19-2002 at 3:00 pm asleep in the car seat; the Mother was surprised to see the Father at the house;

the Mother called her attorney; the Mother would not let him touch the Child.

The Father testified that on 7-29-2002 he sent an e-mail to his attorney describing the Mother's harassment towards him. The Father also made reference to a 9-25-2002 e-mail.

The Father testified that on 11-2-2002 he went to the Mother's house (the marital home) to wait for the painter and while he was there he put the drinking glasses his mother had given him while he was in college in a bag intending to take them with him and the Wife screamed and swore at him in front of the Child. (According to Exhibit U before putting the glasses in the bag the Father had asked the Mother if he could take them and the Mother had said yes. She later insisted that he could not take the glasses until the divorce was final and the Father left without the glasses.)

The Father testified that on 11-3-2002 he called to say goodnight to the Child and the Mother screamed at him; the Child was nearby and the Child heard the Mother scream at the Father. According to Exhibit U putting the Child on the phone the Mother said to the Child, "Sorry, sweetheart, you have to talk to your daddy," and the Child screamed, "No!"

The Father testified that on 11-12-2002 he called the Mother to arrange to spend time with the Child on the Child's birthday and the parties agreed that the Father would pick up the Child at 7:30 am and return her at 11:15 am and the Mother insisted on 1/2 day's credit for this visit. (According to Exhibit U the Mother screamed at the Father a number of times during this call and then insisted that the Father had made the Child cry, and during this conversation the Mother had also said to the Child more than once, "Samantha, you have to talk to your daddy.")

The Father testified that on 12-3-2002 he and the Mother argued by phone and the Mother said to him, "Don't be a f--k, that's what you are."

The Father testified that on 4-13-2002 when he brought tax forms to the Wife to sign she screamed at him in front of the Child. (see Exhibit U)

The Father testified that on 4-14-2002 as the Father was driving with the Child the Child said, "Mommy doesn't like my friend Emma or Lisa or daddy or Samantha." (see Exhibit U)

Factor 2: the Child is age three and this factor does not apply

Factor 3: the Father has an excellent relationship with the Child

Factor 4: the Child has no significant adjustment problems; the Child is thriving

Factor 5: the Father is in good mental and physical shape; the Mother is in therapy

Factor 6: the Mother has abused the Father multiple times and has blocked the Father from going downstairs

Factor 7: the Mother has physically abused the Father, the Mother has emotionally abused the Father; the Mother has harassed the Father, the Mother has interfered with the Father's personal liberties multiple times

Factor 8: the Mother has not facilitated or encouraged a close and continuing relationship between the Father and the Child and the Father does encourage a relationship between the Mother and the Child (see Factor 1 above)

The Father referred to Husband's Exhibit H and the Father testified that the Mother does not encourage a relationship between the Father and the Child; the Father stated that the Mother does not encourage dialog, the Father thinks the Mother is trying to alienate the Child against the Father, and according to the Father the Mother is seeking revenge. The Father stated that the Mother indicated that she

wants to remove the Child to New Jersey, the Father opposes removal and the Father thinks the Mother is angry with the Father

The Father referred to Husband's Exhibit H and stated that he wants 50/50 time with the Child, the Mother won't abide by the current schedule, the Mother prevents the Father from seeing the Child, the Mother has said she does not trust the Father, the Mother denied the Father equal parenting time, the Mother prevented a planned vacation when the Father was to take the Child to California

The Father referred to Husband's Exhibit E, e-mails between the Mother and the Father from 10-14-2002 through 10-16-2002 whereby the Mother agreed to makeup time the Father was to use to visit his father; the Mother wanted to visit her family in New Jersey, the Father had planned 2 vacations before the end of 2002. Referring to Husband's Exhibit F the Husband testified that the Wife frustrated a 9 day visit to California that he had planned and he complained that in 2002 the Wife took the Child to the East Coast 56 days to visit her family. The Husband complained further that in 2001 the Wife took the Child to the East Coast 38 days to visit her family.

The Father complained further that the Mother denied him the ability to schedule two makeup days even though she had agreed to more days and one dinner; the Mother prevented him from scheduling makeup days together; the Mother denied him makeup time when he traveled out of town on business, and, when his sister died of cancer in California the Mother did not let the Child go. The Father testified to numerous dates on which the Mother denied him agreed upon time with the Child while the parties were living separate and apart but in the same house.

The Father testified that, "All I wanted was equal parenting time."

The Father testified that he thinks the Mother makes up complete lies about him and stretches the truth. He denied ever physically abusing the Wife and stated that he thinks the Wife is trying to create a false impression that his behavior is similar to the Wife's behavior. The Father testified that although the Mother claims to be the primary caretaker of the Child he is extremely active and involved in all aspects of the Child's life, and that if the Child had a primary caretaker then it was him as he spent the majority of time with the Child. The Father testified that in 2001 the nanny left at 4:30 pm and the Mother arrived home at 6:30 or 7:00 pm. The Father testified that both parties cared for the Child.

The Father testified further that he worked from home 70% of the time and that is where the Child was. The Father testified that the Mother will tell the Child what to say on the phone and the Child will mimic the Mother's words. He stated that he asked the Mother to return the Child's clothes that belonged to him and as a result the Mother accused him of stealing the Child's clothes.

The Father testified that he continues to encourage a close relationship between the Child and the Mother. As examples the Father stated that on March 6, 2002 he properly installed the Child's car seat in the Mother's car; on March 8, 2002 he offered the Mother two makeup days; he conference called the Mother, the maternal grandmother and the Child; on September 28, 2002 the Mother was in a car accident and he took the Child to the emergency room, he called the Mother's family to notify them, he spoke to the maternal grandmother, he stayed with the Mother until the hospital released her, he drove the Mother's friend home, he went to Walgreen's to get the Mother's prescription (they were closed), he drove the Mother home, he prepared the Mother's dinner, he offered to go to another Walgreen's but the Mother refused; on October 2, 2002 he again installed the Child's car seat in the Mother's rental car; on October 31, 2002 he

shared his time with the Mother on Halloween; he has been flexible and accommodates the Mother's request to switch dates and the Father listed 11 dates in 2002 when this had occurred. He left some items (TV, VCR, stereo) at the Mother's house until the Mother was able to replace them.

The Father testified that he agreed to hire the nanny the Mother wanted that he did not want, however, the Mother refuses to allow any say in the Child's day care or school and the Mother did not allow the Father to select the Child's school.

The Father testified that he asks to be an equal part of the Child's life and the Mother asks for 83% of the time with the Child and sole custody.

22. That regarding 750 ILCS 5/602.1(c) the Husband testified that the Father cooperates with the Mother regarding decisions affecting the Child and the Mother does not often do this.

23. That the Husband's non-marital property is described and valued as follows:

a. glasses Husband's mother gave him in college and Husband's other things from college

b. a trust given to the Husband by his father in December 2001 (the Husband is the beneficiary of a trust account established by his father dated 12-27-2001 - see Wife's Exhibit 25); the value of the trust is $7,050.00; the Husband is trustee and he is the sole beneficiary and he is entitled to receive the principal and interest eventually; as of 6-19-2003, his 35th birthday, the Husband can receive 1/3 of the value; at age 40 the Husband can receive 1/2 the value; after age 45 the Husband can receive the balance; the Husband is entitled to the income of the trust at least quarterly; the corpus of the trust is a Citibank account; on 3-30-2003 the trust balance was $6,777.39; the only asset of the trust is cash; the initial contribution to the trust was $10,000.00

c. an interest in a trust given to the Husband's sister by their father in December 2001 which became the Husband's upon the death of his sister (the value of the trust is $7,050.00); the two trusts together are valued at $14,100.00 as of June 30,2001, and according to the Husband the Trust Agreements state that the trusts are for the Husband and his sister's purposes and are not to be used in any kind of court; the trust balance was $6,777.39 on 3-30-2003 (see Wife's Exhibit 74); the initial contribution to the trust was $10,000.00

24. That on the issue of "finances including child support" the Husband testified as follows:

a. that he works for IBM

b. that his major assets are as follows:

(1) IBM Employee Stock Ownership Plan (ESOP) titled in the Husband's name, containing as of 4-15-2003 294 shares of IBM stock with a market price of $88.25 per share as of 4-15-2003 and a value of approximately $25,850.00 ($25,945.50). On cross-examination the Husband testified that he did not think he bought any more shares since 4-15-2003, but maybe one more period before he got out. The Husband stated that he got out of the ESOP plan; the shares are still there but he stopped contributing. The value of the plan on 7-23-2003 = $28,850.00.

(2) IBM 401 (k) plan titled in Husband's name and valued at approximately $26,361.00 on 4-15-2003. On cross-examination the Husband denied that the full balance as of 4-15-03 is $43,836.00 stating that there is a loan out to the Husband in the amount of $17,475.98 and that he used the money for counsel fees and to pay people to help him do legal research on his own. The Husband stated that the Center for Children's Justice.org has been his "primary counsel." The Husband stated that he also purchased legal materials, books and videotapes about how to act pro se. The

Husband stated that he paid off credit cards bills and used $500.00 for car related expenses. The Husband stated that since he became pro se he has paid court reporter fees and past due fees to his previous attorneys. When questioned about the closing balance of his 401(k) at the end of the first quarter 2002 in the amount of $72,512.00 the Husband testified that the decrease in value was purely due to market fluctuations, and that he has 100% invested in IBM stock. Value on 7-23-2003 = $30,000.00 +.

(3) IRA at Citibank titled in Husband's name and valued at $34,440.00 on 4-15-2003 and on 7-23-2003.

(4) condominium titled in the name of both parties located at 2034 N. Seminary; an offer to purchase was made 11-6-2002 for $560,000.00; broker's commission 4%; approximate value $537,000.00; mortgage balance $284,000.00; house listed for $599,000.00. According to the Husband he contributed $75,500.00 of his non-marital assets to purchase that property excluding all closing costs, and he contributed $75,743.00 of his non-marital assets for home improvements and the Wife contributed zero of her non-marital assets towards the purchase of, or improvements to the home

(5) Life insurance policy on the Husband's life with Seabury and Smith Insurance Company with a death benefit of $270,000.00 as of 11-30-2002.

(6) Jewelry titled in Husband's name valued as $24,450.00 as of 9-17-1997

(7) 1998 Acura Sports Utility Vehicle titled in the name of both parties (and according to the Husband the Wife refuses to remove her name from the title) valued at $8,890.00 as of 1-9-2003

(8) Husband's checking account at Citibank valued at $20,700.00 as of 6-30-2003. Value on 7-23-2003 = $17,300.00

c. that his debts are as follows:

(1) $12,100.00 credit card debt on Capital One credit card as of 6-29-2003

(2) $4,400.00 credit card debt on Citibank Mastercard as of 6-29-2003

(3) $1,100.00 credit card debt on American Express credit card as of 6-29-2003

(4) IBM 401 (k) plan loan balance of $16,200.00 and that the $26,361.00 value of the plan includes this loan

d. that his salary at IBM is his only salary and that his base salary is $135,000.00 and that there is the potential every year for a possible but not guaranteed bonus, and that if he earns a bonus then it is paid out in the following year after it is earned, and that the bonus he earned in 2002 which was paid to him in 2003 was much less than the bonus that he earned in 2001 which was paid to him in 2002

e. that on the issue of child support the Husband relies on Exhibit DDDD (a Court Order entered 9-30-2002), on Exhibit A (Agreed Interim Order entered March 25, 2002), on an alleged oral agreement entered between the parties in February 2002 (while this case was pending) wherein the parties agreed orally that neither party would pay child support to the other (on this issue the Father alleges that the Mother and her attorney committed a "false tort" and that the Wife breached an oral contract), on Exhibit YYW (an e-mail from the Husband to the Wife dated 2-6-2003 concerning the constitutional rights of the parties as the Husband sees it and denigrating the attorneys for the Wife and the Child), on Exhibit KKKK (an e-mail from the Husband to the Wife dated February 26, 2002 with a list of personal property attached and its disposition).

The Order entered September 30, 2002 was entered without prejudice to either party's right to contest the issue

and seek set offs/credits at final trial. This Order required the Husband to pay temporary support to the Wife beginning October 1, 2002 as follows: $78.00 per month towards the family medical and dental insurance through the Wife's employment or a total of ? to date of Judgment (this insurance covers the Husband, the Wife, and the Child); $208.00 per month as contribution to the family's Accenture Health Care Flexible Spending Account until December 31, 2002 for a total of $624.00 (this account covered the Husband, the Wife, and the Child, but when the Husband tried to use it the Wife had already used up the full amount); $314.00 per month representing 1/2 of the required monthly payment towards the Wife's 401 (k) loan of $1553.36 until paid in full for a total of $776.68 (the Husband denies that the Wife took this loan to pay for home improvements or that the Wife took this loan at the Husband's request); $336.00 per month towards the household mortgage payments for a total of? to date of Judgment; $314.00 per month for temporary child support; each party to continue to pay 1/2 the cost of the Child's nanny; each party to pay the expenses of the dog when the dog was with that party, namely whenever the Child was with that parent; Husband to pay to Wife $3,516.00 as retroactive payment of the above expenses for July, August, September 2002.

The five page Order entered March 25, 2002 states at paragraph C of the findings that it includes "final allocation of personal property and division of personal checking accounts," and is an interim order "without prejudice to either party" and not a permanent order regarding all other matters such as parenting time and telephone access between the parties and the Child.

Paragraph C. 1. of this 3-25-2002 order which states, "The parties' respective obligations to pay child support are reserved during the pendency of the parenting schedule as set forth herein and each party shall pay and be responsible for

SAMANTHA'S reasonable needs while SAMANTHA is in his or her care," has been lined out and the change has been initialed by the Child Representative and by the Wife's attorney but not by the Husband's attorney.

The 3-25-2002 order provides that the parties agree to sell the marital home, that no later than April 1, 2002 the home shall be listed for sale, and that the Wife may continue to remain in the home until it is sold.

The 3-25-2002 order states that from the parties' joint checking account at Citibank Dr. Alan Childs was paid $8,000.00 as full payment for the 604(b) evaluation and Jacalyn Birnbaum was paid $6,000.00 for interim and prospective fees as Child's Representative.

The 3-25-2002 order states that "each party will open a separate checking account from which each party will hereinafter deposit their respective paychecks and the parties will retain their respective checking accounts as advancement to each party of and from the marital estate without further analysis as to expenditures or the like. THE PARTIES STIPULATE AND AGREE THAT THE ACCOUNTS WILL BE DEEMED EQUIVALENT IN VALUE FOR PURPOSES OF FINAL PROPERTY DIVISION, WITHOUT ANY FURTHER ANALYSIS."

The 3-25-2002 order states, "The parties stipulate and agree that they have reached a final equitable division to the personal property as set forth in Exhibit "B" and the property as divided shall be deemed an advancement to each party of and from his/her ultimate portion of the marital estate, and/or an allocation of her (sic)/her non-marital property, as the case may be, and the parties stipulate and agree that the division of the personal property is final and will be deemed to be equivalent in value for purposes of final division, without further analysis." Exhibit B, consisting of 4 pages, is attached to the court order.

The 3-25-2002 order states, "Brian shall retain a certain Acura Sports Utility Vehicle as his sole property and same shall be considered an advancement to him of and from his ultimate portion of the marital estate; Laurie shall retain a certain BMW automobile as her sole property and same shall be considered an advancement to her and from her ultimate portion of the marital estate."

Regarding the 3-25-2002 order the Husband testified that the Wife made false statements to get the order entered and to get the Husband to move out of the home and to cheat the Husband out of other property and that he relied on the Wife's truthfulness. The Husband testified that he felt he could rely on the three attorneys who were present at the negotiation of Exhibit A, the 3-25-2002 order. The Husband stated further that the Wife sandbagged him through her attorneys and the Wife refused inclusion of the child support language. According to the Husband the Wife refused to sign the order unless paragraph C was removed. The Husband stated that he moved out on 2-25-2002 before the formal order was entered. According to the Husband as of 7-1-2003 he had met all of the Wife's conditions in Exhibit A, namely he entered a one year agreement for an apartment, he had already lived in that apartment for one month, he had moved out, the Child was age 2 then and adapting pretty well to his new home, he thought it would be a hardship to the Child to move back home. According to the Husband he allowed paragraph C-1 to be removed over duress.

The Husband stated further that the Wife did not follow the 3-25-2002 court order regarding her paychecks, the division of the major personal property, and the provision that the Husband was to retain his automobile. The Husband stated that the Wife spent over $7,600.00 on cosmetic dental work and the Wife charged 1 1/2 months before the Wife claimed she needed financial assistance, and the Wife bought a BMW with a $5,000.00 down payment on 2-21-2002 two

days after Exhibit A was negotiated. According to the Husband he incurred significant attorneys' fees to unsuccessfully fight the Wife's fraudulent behavior. The Husband testified that the Wife did not give him half the Child's clothes; she gave him a few odds and ends; she sent one outfit per day and required its return; he spent $1,200.00 for new clothes for the Child.

25. That on the issue of maintenance the Husband testified that on April 1, 2003 the mortgage on the marital home was reduced from $2,122.95 to $1,914.89 per month and that pursuant to the Court order entered September 30, 2002 he pays $336.00 of that amount and therefore the Wife pays only $1,578.89 per month. The Husband testified further that as of March 1, 2003 his pays rent in the amount of $1,475.00 per month plus he contributes $336.00 to the mortgage payment on the Wife's residence and thus his monthly housing expense is $1,811.00 per month, and therefore at the time of trial the Husband was paying $232.11 per month more for housing than the Wife was.

26. That on the issue of maintenance the Husband testified further that he has a significantly reduced standard of living while the Wife's standard of living has not been reduced. The Husband testified that for the last 15 months he has lived in a small two bedroom, one bathroom apartment on the 4th floor of an old building with no elevator and no storage, in the Lakeview area on a loud, busy street off Broadway with no laundry, no garage parking, no back yard, old appliances, and no parks nearby. The Husband testified further that, on-the-other-hand, the Wife has lived alone for 15 months in a large, beautiful four-bedroom, two bathroom home with a large dining room, a great-room, a relatively new kitchen, new appliances, a backyard, laundry machines, a garage, two parks one block away, in the Lincoln Park area on a quiet street where the children on the street are the Child's friends. The Husband testified further that this home

was purchased with the Husband's non-marital funds, that the home improvements were paid for with the Husband's non-marital funds, and that the mortgage payments were made from the Husband's salary.

27. That on the issue of maintenance the Husband testified that in December 2001 the Wife solely decided to contribute the maximum amount of $5,000.00 to a flexible spending healthcare plan, and that Exhibit DDDD, the order entered 9-30-2002 ordered him to pay $2,500.00 for his "half" and that he received zero value for this payment. The Husband stated that he filed two claims for reimbursement on 11-14-2002 which totaled $74.09 but he received no reimbursement, and that the Wife said that she got checks that fully depleted the reimbursement account. The Husband testified further that he contributed $2,500.00 to the Wife for her flexible spending account and the Wife refused to reimburse the Husband the $2,500.00. The Husband testified further that he was ordered to pay half the loan the Wife took out of her 401 (k) plan and that he paid $2,826.00 to the Wife's 401 (k) plan.

28. That on the issue of maintenance the Husband testified that the Wife earns a salary of $105,000.00 a year; she has a BA degree from Syracuse University; she has a graduate degree from Stevens Institute of Technology; she has worked for over 12 years; she did not need the temporary support the Husband gave her; she pursued a career throughout the marriage; she did not contribute as a homemaker - both the Husband and the Wife were "homemakers"; the Wife's high standard of living was self-imposed based on the Husband's income and the Husband's non-marital assets; the first 26 months of the marriage the Wife minimized her contribution of earnings and pre-marital funds.

29. That on the issue of maintenance the Husband testified that between January 1, 2002 and January 14, 2003

the Wife spent $27,887.70 on clothes and that the Wife was not in need of temporary maintenance if she was spending money on clothes. According to the Husband in the last two years the Wife spent 350% more on clothes than the Husband spent on clothes in the entire marriage and that he spent $7,983.67 between January 1, 1998 and December 31, 2002. The Husband stated further that on the Wife's emergency petition her 13.3.3 affidavit was perjured in that the Wife omitted her Vanguard IRA account of $8,500.00 and her Accenture 401 (k) account of $60,000.00. The Husband testified further that while the Wife was saying she needed emergency support she bought a BMW and she spent over $7,000.00 on dental work, she spent funds "out of plan" for a therapist when the cost "in plan" was $15.00 per session. The Husband stressed that the Wife's net monthly income is $5,800.00, that the Wife is in control of her discretionary income and that the Wife can afford all of her reasonable expenses. The Husband testified that the Wife funneled $7,442.38 to her New Jersey family without the Husband's knowledge or approval.

30. That on the issue of dissipation the Husband testified that the parties argued constantly about the Wife not contributing to the marital expenses and that tension increased after the parties moved to Chicago from New Jersey. The Husband testified that the tension included the Wife spending time on the phone with her East Coast family. The Husband stated that on November 23, 1998 the Wife contributed $15,000.00 to the marital expenses. The Husband testified further that the irreconcilable breakdown of the marriage began a few months after August 1, 1998 when the parties moved to Chicago and on April 28, 2000 he filed for divorce. The Husband stated that in July 2000 the parties attempted to reconcile but eleven months later the parties agreed the marriage was not working. The Husband testified that he suggested June 1, 2001 as the date of the breakdown of the marriage when the parties decided the

marriage was not going to work THE HUSBAND CLAIMS THAT BETWEEN JUNE 1, 2001 AND FEBRUARY 19, 2002 THE WIFE DISSIPATED $29,195.00 IN MARITAL FUNDS itemized as follows and he is seeking reimbursement of 50%:

a. $3,853.00 for restorative dental work charged to the joint checking account and not reimbursed by insurance because it was cosmetic (THE COURT FINDS NO DISSIPATION)

b. $3,440.81 for therapy from the marital checking account. The Husband complained that the Wife refused to use an "in plan" therapist THROUGHOUT THE MARRIAGE, and that an "in plan" therapist cost $15.00 per session. The Husband stated further that the Wife saw the therapist once or twice a week and that this expense was of no value to him (THE COURT FINDS NO DISSIPATION)

c. the Husband testified that the parties paid their personal credit card bills from the marital checking account and that his personal charges totaled $8,143.56 excluding reimbursements and the Wife's personal charges totaled $21,523.06 and that the Wife spent $13,389.50 (actually $13,379.50) more than he did (THE COURT FINDS NO DISSIPATION)

d. the Husband testified that from 6-1-2001 to 2-19-2002 the Husband paid $6,629.00 in attorneys' fees and the Wife paid $6,533.80 in attorneys' fees

e. the Husband testified that from 3-21-2002 until 11-2002 he subsidized over $1000.00 of the Wife's nanny expense not related to childcare in that the nanny cleaned the Wife's home once a week for five hours a week, and the nanny drove the Wife to the airport; the Husband seeks reimbursement of $1,550.00 for nanny costs he unwillingly paid

f. the Husband testified that he seeks reimbursement of the $2,826.00 he was ordered to pay for half the Wife's 401 (k) loan for the Wife's personal spending

g. the Husband testified that the Wife took out the entire balance of the Child's account in the amount of $680.08

h. the Husband testified that the Wife funneled $7,442.38 to her New Jersey family without his knowledge or approval, as follows:

(1) on 10-13-1999 the Wife took $2,000.00 from her New Jersey bank account, check number 2370, to pay her sister Jennifer Weissberger's MBNA America credit card; the Husband testified further that he was in a marriage therapy session when the Wife said she gave $1,000.00 to her sister but he thinks he really gave her sister $2,000.00

(2) on 11-30-1999 the Wife took $4,000.00 from her New Jersey bank account, check number 2379, and gave it to her father Joe Weissberger

(3) on 10-6-1999 the Wife paid her sister's Macy's credit card bill in the amount of $342.60

(4) on 10-6-1999 the Wife paid her sister's Bloomingdale's credit card bill in the amount of $316.95

(5) on 10-6-1999 the Wife paid her sister's Nordstrom's credit card bill in the amount of $303.15

(6) the Wife's sister charged $479.68 on the Wife's credit cards on various dates, and that Jennifer Weissberger was an authorized signer on the Wife's American Express credit card which was paid from marital funds

31. That on the issue of whether property is marital or non-marital the Husband testified that excluding maximum contributions to 401 (k) plans in 1997 the Wife's gross income was $75,469.15 and the Husband's gross income was $79,549.46; in 1998 the Wife's gross income was $65,334.08

and the Husband's gross income was $99,857.34 and according to the Husband in 1998 the Wife contributed only $4,600.00 to the marriage but she did not contribute her paycheck; in 1999 the Wife's gross income was $74,574.61 and the Husband's gross income was $113,033.35; for the three years Wife's total gross income was $215,377.84 and the Husband's total gross income was $292,440.15. The Husband testified further that between September 1, 1997 and October 22, 1999 (the date on which the Wife contributed her first paycheck to the marriage), the Wife had $100,619.00 disposal net income deposited to the Wife's personal checking account at Summit Bank and the Wife deposited more reimbursements.

32. That on the issue of whether property is marital or non-marital the Husband testified that from the date of the marriage until 10-22-1999 the parties had both separate and joint bank accounts and credit cards. The Husband referred to Exhibit DDD and testified that the parties opened a joint money market account which was intended for wedding checks and the Wife's monthly contributions. According to the Husband before the parties married they agreed that the Wife would deposit $1,760.00 (per month) into the joint account and that half the expense amount would be transferred to the Husband's personal account and then the Husband would pay the expense. According to the Husband the parties agreed to only contribute a maximum of $1,760.00 to this account and the rest was for personal use.

33. That on the issue of whether property is marital or non-marital the Husband referred to Exhibit SS and cited In re Marriage of Hagshenas (1992) 234 Ill. App. 3d 178 and In re Marriage of Gattone (2000) 317 Ill. App. 3d 346, and the Husband testified that the marital checking account was originally the Husband's personal checking account. The Husband testified further that the parties lived together before they married and during that time they shared

expenses equally - food, taking care of the dog, parking, insurance, "we shared it all."

34. That the Husband testified that on November 16, 1997, after the parties married, he opened a new account at Citibank to use as a personal account and he transferred $100,605.20 to the new account from his premarital (non-marital) assets. The Husband testified that on December 12, 1997 he made an electronic transfer in the amount of $35,000.00 from the old account to the new account and that he transferred $1,780.20 to the new account on January 2, 1998. The Husband stated that he kept the old checking account open until February 26, 1998 due to automatic deposit. (Total contribution from Husband's non-marital estate to the marital estate equals $137,385.40.) The Husband testified further that the Wife began to deposit her paycheck to this account on 10/22/1999 and this is when he renamed the account. (The account in Quicken was called Brian's Citigold checking.) The very first statement for this account for November 1 - November 30, 1997 indicates that the account is in the name of both parties.

35. That the Husband testified that he owned stock before the marriage that was associated with the old checking account that he transferred to the new checking account: namely, 200 shares of Bay Networks that he purchased 6-21-1996, and which he sold 7-20-1998 for $34.00 a share or $6,800.00; 300 shares of Oak Technologies that he purchased 6-26-1996, and which he sold 4-16-2002 for $16.00 a share or $4,800.00; 200 shares of Broderbund Software that he purchased 6-26-1996, and which he sold 7-15-1998 for $25.00 a share or $5,000.00; 100 shares of IBM that he purchased 2-20-1997 that split 9-1-1997, which he sold 7-13-1998 for $120.00 a share or $24,000.00; 300 shares of Donna Karen that he purchased 3-26-1997, and which he sold 11-29-2001 for $10.75 a share or $3,225.00. The Husband testified further that he loaned his father

$5,000.00 on 8-15-1997 and $5,000.00 on 9-10-1997 and that on 12-9-1997 he deposited the $10,000.00 repayment from his father into the new checking account. The Husband testified further that on 12-9-1997 he also deposited $10,000.00 to the new account that he received as a gift from his parents.

36. That the Husband testified that his IBM wages began to be deposited automatically to the new account (in the name of both parties) on 12-11-1997. The Husband testified further that he opened a new joint money market account at Citibank for the parties that could be linked to his exclusive account so he could transfer money easily between the two accounts and that the intent of the new joint money market account was the same as the intent of the old joint money market account. The Husband testified that each party was to deposit equal funds into this account and then money would be moved out of the money market account just to pay expenses from the Husband's exclusive checking account. The Husband testified that he kept detailed financial records on his Quicken software of basically all the parties financial transactions (the Husband referred to Husband's Exhibit VV) and the Court finds this to be true. The Husband testified that the parties wanted both names on the joint account, that "we considered the account a marital asset," and that Citibank required both names on the account to link the account. The Husband testified further that the parties agreed that the Wife was not to use the Husband's personal checking account and the Wife opened a second account at Citibank with the Husband's name on it which the Husband was not to use unless authorized by the Wife, and that the Wife's account was not linked to the other two accounts. The Husband testified that he transferred $5,000.00 to open the Wife's checking account and the Wife paid him back.

37. That the Husband testified that the $12,452.46 remaining in the old joint money market account was

transferred to the new joint money market account on 4-11-1998.

38. That the Husband testified that from the date of the marriage on 10-31-1997 until 11-22-1999 he paid the marital expenses from his income with minimal contribution from the Wife and that the Wife contributed only $4,600.00 to the joint account ($2,300.00 in January 1998 and $2,300.00 in February 1998). According to the Husband the Wife made no further contributions to the joint account and that this "SIGNIFICANTLY DETERIORATED THE MARRIAGE". According to the Husband each party agreed to contribute $1,760.00 per month to the marriage and the Wife did not comply. The Husband testified that on 11-21-1998 the Wife agreed to contribute $15,000.00 to the marriage; on 1-25-1999 the Wife agreed to contribute another $10,000.00 to the marriage; on 2-1-1999 the Husband agreed to return $10,000.00 to the Wife; on 7-8-1999 the Wife agreed to contribute $16,000.00 to the marriage; on 10-17-1999 the Wife agreed to contribute $8,000.00 to the marriage; on 10-21-1999 the Wife contributed her first paycheck to the marriage, $3,974.22 twenty-six months after the parties married. According to the Husband the Wife only contributed 32% of the marital expenses.

39. That the Husband testified that Husband's Exhibit CCCCC shows joint marital expenses charged on Husband's personal checking account/credit card totaled $47,133.15 excluding the $5,000.00 cash the Husband gave the Wife, and Husband's Exhibit AAA shows joint credit card expenses paid from Husband's checking account total $101,934.53 which includes charges for the Wife's personal use "contrary to the Husband's request".

40. That the Husband testified that he contributed $14,080.00 in the first 8 months of the marriage and that he stopped making $1,760.00 per month contributions after he had made 8 payments.

41. That the Husband testified that while the Wife refused to pay the agreed amounts the Wife pressured the Husband to spend lavishly against his wishes. The Husband testified further that he bought a new 1998 Acura Sports Utility Vehicle for $36,161.74 ($7,200.00 from the trade-in of his BMW plus $27,613.00 from his personal checking account, and that the Wife agreed that the marriage should make a small contribution toward the purchase of the Acura, by agreement $2,000.00, 5% of the purchase price, $1,000.00 from each party; the $2,000.00 was placed on the joint credit card, but the Wife did not contribute so the Husband paid for the whole thing) because the Wife pressured him to sell his car, a 1991 BMW purchased 8-13-1991 because the Wife said she was not able to learn to drive a manual transmission. The Husband testified further that the title to the Acura was placed in both names to get a $1,000.00 rebate offered to a second time buyer as the Wife had an Acura already which she gave to her parents. (THE PARTIES AGREED THAT THE HUSBAND SHALL KEEP THE ACURA AS HIS SOLE PROPERTY FREE FROM ANY CLAIM BY THE WIFE.)

42. That the Husband testified that ELEVEN MONTHS AFTER THE MARRIAGE (8 months after the Citigold account was opened in both names) WHILE THE WIFE WAS NOT CONTRIBUTING HE PURCHASED THE HOME LOCATED AT 2034 N. Seminary, Unit 1, Chicago, on July 24, 1998 for $370,000.00, and that he made the down payment of $75,500.00 with his non-marital funds: $1,000.00 on 6-17-1998, $36,000.00 on 6-17-1998, $38,500.00 on 7-24-1998. (Both parties signed the real estate sales contract, the earnest money came from the account in both parties' names, the name of both parties is on the title to the home, the parties took title as tenants by the entirety, the Husband was not at the closing, the Wife signed the closing documents for both the Husband and the Wife.) The Husband seeks full reimbursement. According to the

Husband he put both names on the title to avoid additional financial arguments with the Wife. The Husband testified that he did not consider the purchase of the house to be a gift to the marriage. The Court does not believe him. The Court finds the marital home located at 2034 N. Seminary, Unit 1, Chicago, Illinois to be marital property.

43. That the Husband testified that all home improvements were paid from his non-marital property and his personal assets: he took two loans from his 401(k), $9,550.00 on 6-17-1998 and $19,950.00 on 9-4-1999; he took a $15,000.00 loan from his parents on 8-26-1999 to pay for home improvements, (these loans were repaid in full from the joint Citigold account in the name of both parties), and his parents gave him $5,000.00 to congratulate him for purchasing a home and suggested that he use the gift for home improvements. The Husband testified that some home improvements totaling $31,353.95 were charged to joint credit cards as the Wife agreed to allow some home improvements to be financed by the marriage, but when it came time to pay the debt the Wife did not contribute so the Husband paid it all.

44. That the Husband testified that he paid all the mortgage payments, all closing costs, all legal fees, all real estate taxes, all termite and pest control fees from his personal checking account (the account in both parties names). The Husband testified further that he exercised all management and control over the home -- all construction, all maintenance, all financial transactions for the home and for the condo association. The Husband stated that he developed, modified, signed, and negotiated all construction obligations with construction vendors and condo association vendors and that he managed all insurance claims. (During the remodeling the Husband traveled Monday through Thursdays and the Wife dealt with contractors in person while the Husband dealt with contractors by phone, and on

cross-examination the Husband admitted that "we collaborated.") He was also president of the condo association.

45. That the Husband testified that he managed/performed all litigation regarding home improvement contractors and that he deposited $3,128.70 into the marital account from litigation efforts. The Husband filed four different lawsuits. The Husband testified that he litigated and won suit against the windows contractor on 6-26-2001 in case number 00 M 1136777 in the amount of $577.70 which he deposited to the marital account; he won suit against the kitchen cabinet supplier on 7-22-2001 in case number 00 M 1019176 in the amount of $1,801.00 which he deposited to the marital account; he won suit against the kitchen cabinet manufacturers on 7-22-2001 in case number 00 M 1145753 in the amount of $750.00; he won suit against the general contractor on 7-12-2002 in case number 02 M 1100086 in the amount of $528.73 which he deposited to his new personal checking account and he gave the Wife 50% temporarily until the resolution of this trial.

46. That on cross-examination the Husband testified that he also filed suit in New York because there was no heat in the building (he lived in) to get the heat repaired.

47. That on cross-examination the Husband testified that he intends to file lawsuits in the future against Drs. Childs and Blackmon (the 604(b) custody evaluators) for medical malpractice, against both his previous attorneys for malpractice, against the law firm representing the Wife for fraud, a 1983 Civil Rights action against Judge Mathein (the pretrial judge), and he is not sure about this judge.

48. That the parties stipulated in open Court on 7-2-2003 that the Husband gets the Acura and the Wife gets the BMW. The Acura was purchased in April 1998 in the name of both parties and paid for with checks written on the Citigold account in the name of both parties. The title is in the name

of both parties. (Husband's Exhibit A, the Agreed Interim Order entered 3-25-2002 states that the Husband is to keep the Acura as an advancement to the Husband from the marital estate.)

49. That the Husband testified that before the parties married he bought a platinum wedding band for himself to wear (appraised at $800.00 on 9-17-97) and a diamond engagement ring (appraised at $15,000.00 on 6-26-96) and diamond wedding band (appraised at $7,500.00 on 9-17-97) and gold wedding band (appraised at $150.00 on 9-17-97), and that the gold band was exchanged for platinum during the marriage. The Husband testified further that he bought earrings for the Wife to wear valued at $21,334.00 (appraised at $1,000.00 on 9-17-97). The Husband stated that 5 of the 8 diamonds in the earrings were gifts from the Husband's mother to the Husband handed down to the Husband as a family heirloom and that he combined these 5 diamonds with the 3 additional diamonds he bought. The Husband stated that the jewelry is titled in his name and that he did not intend to make a gift to the Wife and that he did not make a gift to the Wife. (The Court does not believe him.) The Husband testified that the jewelry was specifically for the Wife's use only if the parties married or intended to be married (both prerequisites have occurred) and that the Wife gave back the engagement ring when the Husband called off the wedding. The Husband wants the jewelry.

50. That on the issue of attorneys' fees the Husband testified that the Wife earns $105,000.00 per year and the Wife does not need financial support. The Husband testified that the Wife is in control of her discretionary legal expenses just as he is. The Husband testified that the Wife has an education and skills in the work force for over 12 years; the Wife is readily employable; and that he has no duty to pay the Wife's attorneys' fees. The Husband testified that by definition the Wife's attorneys' fees are the Wife's

responsibility and that the Wife made a private choice to incur her litigation fees against the Husband's desire to settle the case; excluding Wife's checking account the Wife has over $80,500.00 to draw on to pay her attorneys' fees; Husband's Exhibit JJJJ shows Wife's assets to be retirement $74,000.00, 401(k) $67,205.35, IRA $6,799.25, stock $2,035.65, stock options $4,533.33; before Husband's Exhibit A was entered the parties attorneys' fees were equivalent; two court orders say each party is responsible for their own expenses and the Wife makes ample assets to pay for her own expenses.

51. That on the issue of attorneys fees the Husband wrote the following to the Wife in Wife's Exhibit 42 dated 2-6-2003, "No matter how much law school they went to, your attorneys never had a chance against me and the Constitution. The only thing you are going to lose from this case is YOUR money that you have/will pay for your attorneys.... You and your attorneys were no longer a concern to me when I properly understood my FUNDAMENTAL RIGHTS.... You are wasting YOUR time and YOUR MONEY, not to mention helping me build a dramatic picture for the media (it's possible there might be a movie about this one day). Your attorneys will lose this case (even though they will win because they will have ALL of YOUR money).... I might help you sue your attorneys when this is all over for malpractice, but I will make that decision based on how much I feel you let them try and hurt Samantha and I. In other words, if I think you didn't try to stop them from trying to take what was mine BY RIGHT, or encouraged them to take what is mine, you can bet I will be MUCH less inclined to help you. You should also know that this is exactly what I think. Only YOU have the power to change my mind BY YOUR ACTIONS, which is something you were not good at during our marriage.... I also STRONGLY suggest that you give me back ALL of the money you have taken from me (i.e. alimony, child support,

insurance, and overpayment for nanny). I suggest you give me back my house and my property (including MY jewelry). I suggest you agree to EQUAL custody and time with Samantha. If you do all of these things, you will have made a noble attempt to redeem yourself. I will then agree to waive all of the money you have dissipated/stolen/hidden (which you know is a significant amount, and which I now have indisputable proof of), and I will help you sue your attorneys and get back what they have taken from you (plus obviously punitive damages, where the big money will be awarded). However, even if you agree to all of these things, I still will have at least 14 Illinois statutes declared unconstitutional as part of this case. So, fortunately or unfortunately, you're going to be famous whether you like it or not.... You're either going to help save America and your daughter's future, or you're going to be a poster child for the BROKE, irrational, and illogical wife who tried to stand in the way of freedom.... Choose wisely. Your future and state-of-mind depend on it."

52. That on the issue of attorneys fees the Husband wrote the following to the Wife in Wife's Exhibit 44 dated 2-25-2003, "Though I hope that you personally would be motivated by an avoidance of legal fees argument, I doubt this will offer much encouragement either (because your attorneys will convince you that you will ultimately be awarded attorneys fees) .... These payments that I currently make to you for the monthly mortgage will cease in July when the divorce is finalized (your attorneys have probably convinced you that you will get additional alimony ? they are wrong, but I'll prove that to you later, or rather thousands of dollars in attorneys' fees later). I would guess that you will spend much more than $624 ($208 times 3 months) between now and then to respond to my pleading that I will likely file in 7 days, but that probably won't make a difference to you? after all, you think you will win, and that will make it worth it. Right? Why would I even bother over $624? You (and your attorneys) should know me well enough by now not to

have to ask that question: principle.... When it all boils down to it Laurie, the more you go to court, the more money they will ultimately make FROM YOU (not from me, contrary to what you/they believe).... I've got over 100 years of U.S. Constitutional decisions that amply support my arguments; arguments that NO One has Ever presented before against the divorce laws of ALL 50 states.... I am concerned about the mental state you are going to be in when you lose. After all, it's unfortunate that you will be the "poster child" when all this occurs (though Samantha is going to be famous). The harder you fight the plain language of the Constitutional arguments and logic, the more money you will lose. It's going to take you years to financially recover from this mess (assuming I don't help you sue your attorneys, and even that is going to take time).... Laurie, our case (unless a few others make it to the U.S. Supreme Court first) is the end of most EVERY aspect of divorce in ALL 50 states, including assignment of custody in the "best interest of the child," assignment of GALS and custody evaluations, child support, alimony, and attorneys' fees .... There's no stopping it now. Which means you have only one of two choices: you can support the unconstitutional laws by trying to use them to your advantage, or you can get out of the way. There is no in-between. There is no gray. Remember: I'm not interested in destroying your financial stability ? I'm only interested in destroying the state laws that have injured me and destroying the careers of those who have supported the fraudulent state laws (funny ? I never considered myself a revolutionary).... In fact (and you may find this hard to believe), you are immaterial to my success, EVEN if you agreed to settle the divorce tomorrow. There are a few of us that are within 2 years of bringing down the entire multi-trillion dollar divorce industry. Do you really want to be in the middle?"

53. That the Husband's litigation strategy is clearly to litigate the Wife into the poor house regardless of whether she "settles the divorce tomorrow."

54. That on the issue of attorneys' fees the Husband wrote the following to the Wife's attorneys in Wife's Exhibit 52 dated 3-2-2003, "I don't negotiate with terrorists, and I don't discuss the "fairness/logic" of my Constitutional rights .... I will file the appropriate motion for support payments. Unfortunately, Laurie is now going to spend all of her hard-earned money defending the State's fraudulent "laws," as we both know the Illinois Attorney General will not support her until I reach the U.S. Supreme Court. That is her choice to be in the middle of this -I gave her the option to get out of the way. She chose not to. As a result of her choice and actions, she now has lost the option and my protection. Without my protection, she will very likely suffer the financial consequences associated with fighting against the Constitution. I don't consider it my problem any longer.... Remember - I don't consider her the enemy. I consider you, the State, and the court my enemies.... Though Laurie will lose, you will all lose more. 1 will not rest until it is so. I have nothing against Laurie, and no ill-feelings toward her. She knows that. But make no mistake about it: I am completely and irrevocably committed to making the most decisive of responses to the illegal conduct and actions of the ENTIRE "family" legal system, including you, the State, and the court. Bet on it."

55. That on cross-examination the Husband testified that, "I was not willing to settle for anything less than equal visitation; I was not willing to pay child support.

56. That on the issue of attorneys' fees Husband's exhibit RRR reflects that between 6-1-2001 and 1-21-2003 the Husband paid $43,178.09 to his attorneys. In February 2003 the Husband paid the Center for Family/Children's' Justice $2,150.00. The Husband testified that, "February was a big month for me," and that he never paid the same amount every month, some months he paid over $2,000.00 and some months he paid only $700.00. The Husband testified further

that he uses the Center for Family Justice for legal support on his constitutional arguments, saying, "They are not attorneys. We are all pro se." The Husband stated that he has been a member of the Center for Family Justice since 3-2002. The Husband testified further that, "No attorney will bite the hand that feeds them. There are going to be a ton of divorce attorneys who are going to be out of work and probably being sued. The State budget will no longer get tens of millions of dollars in payments." The Husband testified further that he pays Versus Law about $10.00 per month. The Husband stated that he bought tapes, software and other materials that generated pleadings for about $500.00, and he bought legal books, legal documents, pleadings and so forth for about $1000.00 + .

57. That on 5-15-2003 the Husband posted a 12 page communication on the winchildcustody.com/fathers/ website titled "Re: Battling custody, child support, alimony, or attorneys' fee ..." (Wife's Exhibit 65) wherein the Husband wrote, "I've wasted over $100,000.00 on useless attorneys who couldn't spell C-O-N-S-T-I-T-U-T-I-O-N-AL-R-I-G-H-T-S," and, "I'm supporting CCJ (Children's Justice) with $700-$1,000/MONTH." The Husband also wrote: "there will be no such thing as custody. Period. There will be no such thing as child support. Period. There will be no such thing as alimony. Period. There will be no such thing as attorneys' fees in divorce cases. Period. I propose no alternatives because there aren't any and won't be any. The Constitution says so." The Husband also wrote, "For those of you who consider CCJ an extremist group, you're damn right it is. In other words, there is nothing we will not do to get our children back from those who stole them from us. There is nothing that we won't do to stop having our money stolen from us. And, if you're willing to not consider yourself an extremist when it comes 2 issues, then you deserve to have stolen what is being stolen from you. This is a black or white issue -there will be no gray."

58. That the Husband testified that he wants full value of the home and all associated mortgage debt acquired with his non-marital assets; the Husband wants an award of $10,033.00 to equalize the parties' contribution to the home improvements; the Husband wants $1,828.72 for litigation decisions related to home improvements paid for by him and deposited to the marital account; the Husband wants each party to get their own 401(k) plan, IRA, stock options, ESOP; the Husband wants the Acura with the year, make, model and VIN clearly stated; the Husband wants the Wife to have the BMW; the Husband wants the 2 platinum wedding bands, the diamond earrings, the diamond engagement ring, the diamond wedding band.

59. That the Husband testified that he wants 1 chair (part of round table and 4 chairs), 4 wall speakers, black and white picture in bathroom, 2 pictures from guest room, trunk in master bedroom, nightstand from child's room, miniature tables from living room, mirror from upstairs hallway, Chagall picture, lamp from master bedroom, child's growth chart, 2 pictures from hallway, white pictures from downstairs bathroom, 2 chairs from New York table and chairs, OR IN THE ALTERNATIVE, all items in Exhibit B attached to Husband's Exhibit A and Husband will return the items he took that are not on that Exhibit B, meaning the items in Husband's Exhibit KKKK or the items listed in Husband's Exhibit A with Exhibit B attached.

60. That the Husband testified that he wants reimbursement as of 6-15-2003 of $3,768.00 in child support that he should not have had to pay. He wants reimbursement as of 6-15-2003 of $5,082.00 for maintenance (mortgage). He wants reimbursement of $2,324.00 for the cost of the Child's schooling which should have been paid 50/50. He wants $26,523.00, 50%, of the Wife's remaining income earned during the marriage that the Wife didn't contribute to the marriage.

61. That the Husband wants to live in the house.

62. That the Husband testified that he wants the Wife to pay 50% of the cost of the court reporter and the transcript costs.

63. That on cross-examination the Husband testified that he works for IBM as an associate partner and that this is a fulltime job with a flexible schedule. He probably averages 50 hours a week. The Husband stated that travel is involved and that in the past he traveled extensively, 3-4 months out of a year. In 2002 the Husband earned $165,000.00 comprised of base salary plus a bonus that he had earned in 2001, the previous year. The Husband testified that his 2002 bonus was $1,700.00, a decrease from the previous year because he was not as focused at the job, he spent all his time figuring out how to protect his daughter, his money and his property, he went after less work, the economy is in shambles and companies were not buying what he does, namely business strategy and consulting. The Husband testified that he is trying to pursue more work internally within IBM to get billable and stay chargeable. He stated that when the Child is with him and not sleeping he focuses on the child, and when the child is asleep he focuses on this case. The Husband testified that between 9:00 pm and 2 or 3:00 am he works on this case non-stop.

64. That on cross-examination the Husband testified that he filed for divorce in April 2000 and that since that date the parties have essentially had joint custody. The Husband stated that there were difficulties with this arrangement over the years: on 6-9-00 the Wife filed a petition to set a temporary visitation schedule; the Child was born 11-13-99 and the Wife was still nursing the Child in June 2000; the Mother nursed the Child for 2 years; in November 2001 the Husband filed a petition to regulate the Wife's removal of the Child from Illinois, the Wife filed a petition for emergency temporary removal, the parties were living in the same house

but could not agree whether the Mother could leave the state with the Child; in 2-2001 the Wife filed a petition for exclusive possession, the parties could not agree to the living arrangements; in 2-2001 the Husband sought a domestic violence order of protection against the Wife, the Husband did not accept his lawyers advice to just move out and only have 4/14 days with the Child and submit to a custody evaluation; the Husband's attorney quit that day; in 4-2001 the Wife filed a petition for temporary support and the husband did not volunteer to pay support of any kind; in 7-2002 the Husband filed a motion for the entry of a Qualified Medical Support Order because the Wife tried to force the Husband to pay the Wife's medical expense plan and the Husband thought the Wife wanted to take all the money for her own expenses, the parties could not agree what to do with health insurance regarding the Child, the parties did not agree who's plan the Child was to be on "because Laurie tried to steal money from me in the name of Samantha"; in 7-2002 the Wife filed a petition for the Husband to contribute to the Child's school tuition, the Wife wanted the Child to go to a religious school, the Husband preferred somewhere else, the Husband is an atheist and switches between agnostic and atheist, his parents are Jewish, the Wife and the Child are Jewish, according to the Husband when the Child is of an age to choose her own religion the Child deserves that choice, and before that the Husband prefers that the Child not go to a school that has Jewish undertones, the Wife wants the Child to be raised Jewish and the Husband stated, "I don't have a problem with (the Wife) raising (the Child) Jewish," the Husband's problem is with the Wife forcing that choice on the Husband; the Child was only accepted to one preschool, the parents were not able to agree regarding preschool, there was a hearing on the preschool issue, the Husband was ordered to pay 61% of the cost; the Husband testified "I will always demand makeup days whenever my time is infringed on, it always has to be equal; in 11-2002 the

Husband filed a motion for turnover of personal property that the Husband states the parties had agreed was the Husband's (nightstand from Child's room, Child's growth chart, Child's phone, Child's books, Child's clothes, etc.), the parties could not agree; 12-5-2002 the Wife filed a petition to establish holiday visitation, the parties could not agree regarding holidays; 3-4-2003 the Husband filed a petition to eliminate temporary support.

65. That on cross-examination the Husband testified that he believes the best interest of the child statute is unconstitutional, that this court has no authority to award custody and that custody itself is an unconstitutional proposition. Regarding Factor 1 of that statute the Husband states that he wants joint custody and the Wife does not; citing the joint custody statute the Husband testified that he demands equal rights and equal time even though the statute does not require equal time, "because I'm a fit parent and THE CHILD'S BEST INTERESTS ARE IRRELEVANT when it comes to (the Husband's) rights." Regarding Factor 3 the Husband quoted Dr. Child's report at pages 3 and 5. Regarding Factor 4 the Husband testified that he averages 5 hours sleep a night, this case consumes all his time, even on the remote possibility that be gets everything he wants he will have to defend in the appeals process, he intends to appeal, he intends to take this case to the U.S. Supreme Court, "I choose to occasionally have free time." The Husband denied suffering from depression in the past and stated that he is sad that the Wife is trying to take the Child away from him, sad that he has been lied to, sad that his money has been stolen from him, sad that his parents disregarded him in his early childhood, sad that he didn't get good grades. The Husband stated that because he suffered as a child when his sister had cancer he gained the ability to see the bigger picture and not let what people say hurt him and not hold it against them.

66. That on cross-examination the Husband testified about a suicide bluff that he believed the Wife was stealing money, trying to alienate him, and trying to hurt him in a number of ways -- in the finances, her family was involved in decision making while the Wife was pregnant, nothing was working; he tried to make her come clean on the money and hold back her family; they had tried therapy, the Wife lied to him, so the Husband thought maybe he needed to give the Wife a little shock, so as a bluff the Husband told the Wife he considered hurting himself because of all the pain the Wife was causing him. According to the Husband the bluff was a bad decision, it made the problem worse. The Husband admitted giving the Wife the silent treatment for periods of time.

67. That on cross-examination the Husband testified that the Wife physically abused him twice, once on 1-26-2002 when the Husband came home at 3:30 am and the Wife came upstairs and screamed at him, he ignored her, the Wife hit him multiple times with her hand as he sat on the couch, he tried to get away and the Wife grabbed a pillow and hit him a couple more times, the Husband got away and went into the dining room. (THE COURT FINDS NO PHYSICAL ABUSE). The second time was 2-10-2002 when the Husband woke up at 7:30 am and went to the Child's room (it was the Husband's day to be with the Child), the Child was not there, the Child was in the Wife's room, the Husband went to the Wife's room, the Wife told the Husband to go away, the Husband did not go away, the Husband knocked for over 5 minutes, the Wife came to the door and unlocked it and told the Husband to go away and the Wife screamed at the Husband, the Husband tried to push the door, the Wife hit the Husband twice with her hands, the Wife closed the door, the Husband knocked another 5 minutes, the Husband pushed the door open, the Wife tried to push the Husband out of the room with her hands. (THE COURT FINDS NO PHYSICAL ABUSE.)

68. That on cross-examination on the issue of the willingness and ability of each parent to facilitate a close relationship between the Child and the other parent the Husband denied that he demanded that the Wife pump her milk when she was breastfeeding the Child, he stated that he did request, beg and plead that the Wife pump her milk.

69. That on cross-examination the Husband acknowledged that the parties cannot agree on whether the Child will attend preschool for a few days a week or for 5 days a week (the Child attends Sanai Preschool, a school selected by the Wife, a school the Husband does not want the Child to attend, and the Court ordered the Husband to pay 61% of the cost); the parties cannot agree on whether the child will take over the counter medication or prescribed medication; the parties cannot agree whether the Child's school may publish the Child's picture in the school newsletter, however, the Husband enrolled in a dating service for Jewish people and voluntarily used the child's picture in three of the eight pictures of him published on the internet in connection with the dating service. On redirect the husband stated that the parents disagree on a number of things but that they can look out together "FOR THE CHILD'S BEST INTEREST."

70. That on cross-examination the Husband acknowledged that he wrote and posted the following statement on the internet on the Center for Children's Justice message board (Wife's Exhibit 67): "My $0.02, for what it's worth .... We are not a democracy, in that 51% of the population cannot deprive the inalienable Rights of the other 49%, no matter how they vote. We are a constitutional republic. The only limitation on your Right is the equal Rights of others (i.e., you cannot infringe on someone else's Rights). In other words, if 51% of the American population consisted of women, and they all voted to deprive the men of any children born without any showing of a crime, one of 2

things would likely happen: 1) the USSC would correctly rule that they can't do that or 2) there wouldn't be enough land in America to bury the bodies of that 51%, (I understand we just acquired a nice piece of land in Iraq - maybe we could ship them there, as I don't want them even buried on and polluting American soil.)" The Husband testified that "this is my sarcastic opinion of looking at it."

71. That on adverse examination the Wife testified that she has no concerns that the Husband will not be able to provide for the Child's basic needs, provide a proper home, food, proper education, or a safe environment. The Wife testified that she believes that the Father loves the Child and that the Child loves the Father and that the Child enjoys the time she spends with the Father. The Mother stated that she is aware of what child abuse is and that she accused the Father of abusing the Child when the Child started to eat solid food and baby food. The Mother testified that when the Child did not want to eat in the time the Father gave the Child, that she would see the Father hold the Child's hands down on the tray and watch the Child cry.

72. That on adverse examination the Wife testified that the Father "absolutely needs to be a participant in the Child's life", and the Wife stated, "You will always be Samantha's father; I will always be Samantha's mother. You will see her, speak to her, encourage her, support her, share holidays with her, be a father to her." The Wife testified that the Father's relationship with the Child and the Child's relationship with the Father "is strong and will continue to get stronger" because the Husband is dedicated to being a father. The Wife testified that the relationship between the Father and the Child will "not grow weaker with less time because the bonds that one creates is about the energy not the time and the relationship that parents build; if (the Father) is there for the Child then the relationship will grow."

73. That on adverse examination the Wife testified that the Child has a close bond with her grandparents in New Jersey through correspondence, trinkets and gifts in the mail, thank you notes, pictures drawn, and that the Child sees these grandparents four times a year and when she sees them she is completely attached to them. The Wife testified further that children do well with routine, you try to minimize breaking up routine, they are responsive and adaptable and as long as you give them nurturing they will adjust to change. The Wife testified that now, under the 50/50 schedule, the Child often wakes up not knowing what house she is going to be in and "there is instability in the schedule right now."

74. That on adverse examination the Wife stated her reasons for not wanting the Child to attend the school the Husband chose. And in testifying further the Wife stated, "I minimize all detrimental actions to Samantha every day with every decision I make." (The Court specifically finds that the Wife makes wise decisions for the Child.)

75. That on adverse examination the Wife testified that the parties fought about the following topics during the marriage: the Husband silencing the Wife; the Wife's involvement with her extended family and friends; finances; the gifts the Wife gave her sister and her parents. The Wife testified that on 10-6-1999 she gave her sister $2,000.00 to pay off the sister's credit card debt. On 11-29-1999 the Wife gave her father $4,000.00. On 10-6-1999 the Wife wrote a check to Macy's for $342.60 to pay her sister's Macy's credit card bill. According to the Wife the sister would pick up things for the parties and the Wife would reimburse her. On 10-6-1999 the Wife wrote a check to Bloomingdale's for $316.95 to pay her sister's Bloomingdale's credit card bill to reimburse her sister for shoes that her sister purchased for the Wife. On 10-6-1999 the Wife wrote a check to Nordstrom's for $303.15 to pay for things her sister

purchased for the parties in New Jersey. The Wife testified further that her sister is an authorized signer on the Wife's American Express Card and has made some charges.

76. That on adverse examination the Wife testified that before the parties married they lived together in an apartment in Hoboken, NJ and they both contributed to the rent, food, dog, rental insurance, utilities, parking but she does not know if the parties contributions were 50/50.

77. That on adverse examination the Wife testified that in 2001 her closet flooded and all her clothes were destroyed and the insurance paid for the damage. The Wife testified that she spent a couple thousand dollars post-pregnancy for clothes and she denied that she spent $15,000.00 for clothes in 2001 and $13,000.00 for clothes in 2002. The parties then agreed that from 2001 to January 1, 2003 the Wife spent $23,569.45 on clothes "to be confirmed by the Wife's attorney."

78. That on adverse examination the Wife testified regarding her healthcare reimbursement plan that the maximum to the account is $5,000.00 and that the Husband paid the Wife $2,500.00 by court order. The Wife stated that the deductible for her healthcare plan was $2,000.00 for the family and that she knew she needed to cover the deductible. The first $2,000.00 went for the deductible alone, and according to the Wife, whenever the Husband went to the doctor it went toward the deductible. The Wife testified further that she knew she needed dental work - seven crowns, and that crowns are not covered in full by her dental plan. The Wife testified that her in-plan coverage allows for a therapist 20 times a year and she went weekly, so in-plan or out of plan she knew she had to pay out of pocket for the therapist.

79. That on adverse examination the Wife testified that she is entitled to interim attorneys' fees because she incurred an enormous amount of attorneys' fees due to the Husband

sending her attorneys reams/volumes of material that they would have to read in entirety and the materials often had no relevance to the particular matter at hand and often times had jargon and material that the Wife did not understand; the reams of material would concern small matters; many things related to the constitution as opposed to "our case" such as Samantha going to school; the enormous material sent costs a lot of money; if the Wife wanted to go on a holiday the Wife would end up in Court because the Husband contested almost every issue; many times the Wife incurred legal fees in the absence of agreement between the parties on issues that the Wife thought were amenable to agreement.

80. That on adverse examination the Wife testified that she does not have enough money to pay her attorneys' fees. On 6-20-2003 the Wife had paid her attorneys $11,533.00 and she had an outstanding balance due of $59,641.00. The Wife stated that there are two attorneys assigned to her case and that each one focuses on a different aspect of the case. The Wife stated further that the fees she has incurred were reasonable and necessary and that the expert was necessary due to the nature of the case.

81. That the Wife testified that the parties met on a plane going from Chicago to NY LaGuardia in the spring of 1995. At the time the Wife lived in Hoboken, N.J. and the Husband lived in Chicago. The Wife moved to New York City in 1995.The Husband moved to New York City in the spring of 1995. The parties lived together in New York City from 1995 through August 1996 and in the summer of 1996 they decided to get married. The parties then moved to Hoboken, N.J., 15 miles from where the Wife was born in Englewood, N.J., and they lived in Hoboken for two years. In 1995 the Wife worked as a manager in Human Resources for American International Group (AIG) and she was familiar with an open position and introduced the Husband to the hiring partner, and in 1996 the Husband worked for AIG as

part of an internal strategic consulting group. According to the Wife the Husband worked for AIG for 1 1/2 years and then he had a disagreement with the manager about how the Husband handled clients. The Wife now works for Accenture, formerly know as Andersen Consulting, as manager in the Human Resource Department.

82. That the Wife testified that while the parties lived in Hoboken the Husband was going to school at the University of Chicago in a weekend MBA program and he commuted. The Husband graduated in June 1996 and the Wife attended the graduation but the Husband's family did not attend. The Husband told his mother she was not invited because she did not want to pay his tuition and the Husband's mother did not want her husband to attend either. According to the Wife there was hostility and animosity between the Husband and his parents and the Husband demanded that his parents not attend his graduation.

83. That the Wife testified that the Husband met her parents in 1995 and that in the beginning the relationship between the Husband and her parents was very friendly and open and that over the years there was a diametric change from friendly to somewhat friendly to not speaking to no contact. The Wife's parents are still alive and they along with her 28 year old sister live in New Jersey. The Wife testified that the Husband complained about her family - they were too involved and communicated with the Wife too often. The Wife stated that the Husband told her how to coach her folks on what to say to the Husband and what not to say.

84. That the Wife testified that after the parties became engaged they met with a rabbi and the first issue to arise was where the parties were living. The Husband expressed a need to live outside the metro area and the Wife wanted to live in the metro area. The parties had several other pre-marital counseling sessions and they met with a marriage counselor 6-8 weeks before the marriage. The Wife stated that on 7-4-

1997 at a couples shower the Husband cancelled the wedding. The Husband said he did not love the Wife anymore and he did not feel the Wife would put her best foot forward and like Chicago as he liked Chicago and the Husband said he did not feel connected to the Wife anymore. Weeks later the Husband stated that these were not his true feelings. After counseling and before the wedding the parties agreed that the Wife would try out Chicago and if Chicago was not working out the parties would move to Boston or DC with frequent trips to the east coast. The parties got married August 3, 1997 and in August 1998 they moved to Chicago and bought a condo in Lincoln Park at 2034 N. Seminary, Unit 1, and the Wife has lived at this address since August 1998.

85. That the Wife testified that when the parties moved to Chicago she was employed at Accenture and the Husband was employed at IBM Consulting Strategic Services, a national practice, and that the Husband is still in the same position but at a higher level and it does not matter where the Husband lives.

86. That the Wife testified that the Child was conceived in February 1999 and that she had a terrible pregnancy. She threw up multiple times a day everyday for the first 7 months and she was hospitalized three different times due to pregnancy for severe dehydration. She worked full time during the pregnancy. The Wife testified that in May 1999 while pregnant she went to London to work and her parents went to London with her while she worked there for a week and stayed with her in the hotel. The Husband came to London the second weekend from midday Friday to Sunday and returned to the U.S. with the Wife. At the end of the weekend on the way to the airport the Husband drove over 100 mph; he did not slow down when the Wife begged him to; he said nothing. The Husband did not speak or look at the Wife during the overnight stay at an airport hotel. The

Husband did not speak to or look at the Wife until the parties arrived at Kennedy Airport. On arrival the Wife threw up. The parties drove the Wife's parents home to New Jersey and returned to a New York City hotel room. The Wife threw up again. The Husband lay on the bed and did not speak to or look at the Wife. The Wife called the Husband's parents who could not help. The Wife learned that the Husband's behavior could have been learned from his mother who did this to him as a child. The Wife called her parents who came and took her to New Jersey. The Husband called the Wife in New Jersey and said he just wanted to say goodbye to the Wife and their unborn child. The Wife's parents took her back to New York where she found the Husband in a dark hotel room with the blinds closed lying on the bed. The Husband said nothing. Several hours later the Husband came out of the bathroom where he had been locked in for over an hour and told the Wife, "Let's do everything you like to do in N.Y." Back in Chicago the Wife saw a psychiatrist three times, the Husband did not want to go with her and he refused to go alone. Later the Husband told the Wife that when he was younger he played with knives on his wrist.

87. That the Wife testified that in February 1999 while she was pregnant the parties bought a 125 year old condo from the owner who had not lived there in 25 years and had had tenants. They bought the condo "as is." At that time the Husband traveled Monday through Thursday or Friday and the Wife worked from home. The Wife stated that she arranged to renovate the condo. In March or April 1999 the parties hired a contractor, the Wife was in the condo daily with the contractor and the Wife dealt with day to day issues; however the Husband wanted to be a part of all final decisions. The Wife testified further that the renovation was completed the day before the Child was born and that the night before the Child was born the parties unpacked boxes in the new kitchen and the Husband demanded that the Wife participate and help fully in the unpacking. The Wife stated

that after she opened 50 boxes she began to have contractions; she called the doctor; the Husband left her alone and went to sleep.

88. That the Wife testified that the Child was born 11-13-99 and she was in the hospital 3 days. She nursed the Child right away. The Wife stated that she had problems with nursing - lots of blistering, engorging, it was a painful process. According to the Wife the parties agreed that breast feeding was the method they wanted to use because the Husband has severe allergies and breast-feeding avoids allergies. The Wife stated that the Husband wanted the Wife to use an electric breast pump to pump milk and give the Child milk in a bottle. The Wife stated that she was home from work 12 weeks and she tried to pump her milk before she returned to work and it was painful. The Wife stated the parties had a confrontation over the Husband wanting to feed the Child with a bottle. The Wife testified that in the beginning the Husband timed her while she breast fed and then later on he timed the left breast and the right breast. The Wife stated that she had a lactation consultant work with her and that her mother stayed with her for the first 10 days after she came home from the hospital. The Wife testified that three days after she came home from the hospital the Husband told her he did not want her family staying there or helping or being a part of it. The Husband became non-responsive, would not recognize the Wife and would not speak to her.

89. That the Wife testified that three weeks after the Child was born the Husband told the Wife he was interested in and had begun research about divorce and the Husband gave the Wife a spreadsheet which was an itemized list of all the wedding expenses and the Husband told the Wife how much the Wife "owed" the Husband for the wedding.

90. That the Wife testified that on Christmas Day 1999 the Husband told the Wife to call her family and tell them

that she was no longer going to speak to them if the Husband was not going to file for divorce. The Husband told the Wife that he must be on the phone when the Wife told her family that she could not speak to them.

91. That the Wife testified that a couple of weeks before 12-31-1999 the Husband stopped sleeping with the Wife and on 12-31-1999 the Husband told the Wife that he went to see an attorney he found on the internet. The Husband became unresponsive and the Wife called family and friends seeking help. The Wife testified that during these months the Husband's relationship with the Child was minimal; he was depressed; he went to bed after dinner at 6-7-8:00 pm. The Wife testified further that in January 2000 she began to see Dr. Karen Jaffe, a therapist, whom she saw for 5 months. Initially the Husband also went to the sessions but he stopped. The Husband filed for divorce in April 2000. The Wife testified that when the Husband filed for divorce a Child Representative was appointed who recommended that the parties see Dr. Gail Grossman for therapy. They went two times and at the second session the Husband said he had no use for the session and he left. The Wife testified that she has been in therapy with Dr. Barbara Berger since May 2001, and that she sees Dr. Berger twice a week if she can to help manage and work with her regarding the demise of the marriage and being a single mom living in Chicago.

92. That the Wife testified that when she went back to work in February 2000 she hired a temporary professional baby sitter/nanny (Teresa) for six months who worked from 7:30 am to 5 or 6:00 pm and who was paid by the hour weekly in cash. Both parties interviewed the nanny. The second nanny hired was a fulltime nanny (Norma) who was also interview by both parties. She worked for one year and was hired to provide primary care for the Child during working hours and was paid $10.00 an hour for a minimum number of hours per week even if either parent took the

Child, and she was also to do light housework and chores and to occasionally prepare meals. She quit when the Husband asked her to sign an unacceptable contract. The third babysitter hired was Donna who worked two years. The Husband negotiated the contract. The Husband moved out in late February 2002 and after he moved out Donna babysat the Child at each parent's house. Donna quit in November 2002. The fourth babysitter was Gala. The Wife testified that she told the Husband it was important for the Child to have one consistent nanny to move with the Child as the Child moved. Gala quit in May 2003. The fifth babysitter was Rachel, a fourth grade school teacher who was looking for summer employment until the second week in August 2003.

93. That the Wife testified that the parties discussed preschool around November 2001; they got several recommendations and agreed on a list of schools and applied. The Child was not accepted at any school on their list. The Child was accepted at Sinai Congregation preschool in May 2002 but the Husband was not interested in this school. Following a court hearing the Wife was allowed to enroll the Child in the fall of 2002 three days per week from 9-11:30 am. After the court hearing the Husband continued to look for an alternative preschool program and he took the Child and the babysitter Donna to the interviews. The Husband wanted to enroll the 2 1/2 year old child in a full day program for the hours the parents worked from 7:30 am to 5:30 pm. The Wife wanted to introduce the Child to school via a transition program a few hours for 1/2 day in the morning or afternoon for a couple of days a week and maintain the nanny for the other hours. The Wife testified that for the 2003-2004 school year the parents applied to all the same schools and added the Lab school. The Child was not accepted at any school except Sinai because she had been a student there the previous year. The parties did agree that the Child would attend Latin School Summer Camp for summer 2003.

94. That the Wife testified that the parties were married by a rabbi and they agreed to raise the Child Jewish. The Wife testified that she understood the Husband's religion to be Jewish. The Wife testified that she wanted the Child to be introduced to Jewish traditions and holidays and to observe those and to be introduced to Hebrew school and be Bar Mitzvah someday.

95. That the Wife testified that the Child is healthy, physically active, but has signs and symptoms of potential asthma. A simple cold manifests itself into bronchial infection. The Child also has quite a bit of exema on her legs and back which is related to her allergies. The Wife testified that the pediatrician prescribed albuterol mist which the Wife uses 7-10 times a year for multiple days during that period. According to the Wife the pediatrician says use albuterol as a preventative and the Husband says don't. The Wife stated that the Husband says, "You should not use medicine unless you absolutely need it." The Wife testified that the parties also disagree on over the counter decongestants for the Child's age and weight. The Wife stated that the Husband does not believe in over the counter medicines or the use of them.

96. That on the subject of discipline the Wife testified that early on she read a book called "1-2-3 Magic". You say to the Child that's 1, that's 2, that's 3 and you remove the Child from the activity you don't want the Child to do and give them a time out away from the situation. The Wife stated that it works very well with the Child and that the Child is 90% compliant. The Wife testified further that she has seen the Husband discipline the Child, first around eating. According to the Wife when the child was 4-5 months old she ate baby food and she was a stubborn eater. The Husband would hold her hands down and force the Child to eat. If the Child cried the Husband would let her cry

and then feed her. The Wife stated that she did not agree with this method.

97. That on the subject of living in Chicago the Wife testified that moving to Chicago was a hard decision for her to make and that she moved to Chicago for her Husband and he is no longer going to be in her life. The Wife testified further that having to stay here was traumatic and she wanted to go back home. The Wife stated that her feelings changed when she recognized the importance of the Child seeing her Dad on a regular basis, frequently, with his participation, and then a move seemed less important and she became quite comfortable with living in Chicago. The Wife testified that she will not pursue her Petition for Removal and that she has no intention of relocating. She is looking for a neighborhood to relocate to. THE WIFE'S PETITION TO REMOVE WAS WITHDRAWN IN OPEN COURT.

98. That on the subject of reconciliation the Wife testified that after consultation with Jacalyn Birnbaum the parties attempted reconciliation from July 2000 to February 2002 when it became clear that reconciliation was not working. The Husband moved out in February 2002. The Wife testified that in January and February 2002 the Husband would go out most evenings after the Child went to sleep and come home between 2 and 3 am. The Wife testified that on 2-10-2002 the Husband put the Child to bed that evening and he went out. The Wife was upstairs with the baby monitor and she went to bed at 10:30 pm. The Husband had not come home so the Wife brought the baby monitor to her room, closed the door and went to sleep. Around 2:00 am the Child woke up crying and the Wife went and got the Child and took her to the Wife's room. The Child was running a fever over 100 and the Wife gave the Child some Tylenol. The Child fell asleep in the Wife's bed and the Wife fell asleep. The Wife testified that she heard the alarm go off at 7:30 am. She settled the Child back down. She heard the

Husband come to her door and knock. She said the baby was still sleeping, stop knocking, she would bring the baby up to the Husband as soon as she woke. The Wife testified that the Child woke up. The Husband continued to bang on the door for 5-10 minutes. She told the Husband to stop banging on the door. The Husband kept banging saying this was his morning with the Child, bring her up. The Mother told the Father she wanted to take the Child's temperature to see if the fever was gone. The Mother opened the door to tell the Father she was checking the temperature. The Father pushed the door. The Mother said please leave us alone. The Child was on the Mother's bed. The Mother pushed the door shut. The Father pushed the door in. The Mother asked the Father to stay out of her room. The Father would not leave. The Mother said she would call the police. The Mother dialed 911. The police came 15 minutes later. The Father was there. The Mother was holding the Child. The police asked the Father to sit down on a chair and they asked the Mother to go in the kitchen and explain what happened. The police looked at the door – the handle had been broken. The Mother testified that she did not touch the door handle. The police asked the Father to please leave the house to diffuse the situation and the Father agreed. Later that day with the Mother's consent the Father came to the house with a friend and the police to get some things.

99. That the Wife testified that the next day the parties went to Court about the situation and by 5:00 pm the matter was unresolved by the Court. According to the Wife the non-court resolution was that since beginning that evening the Husband was to be out of town traveling for a full week she was to go home and the Husband was to leave. The Wife testified further that she went home, double-bolted the front and back doors and started dinner. She heard the alarm door go off and she called 911 and her attorney. The Wife testified that she saw the Husband; he came from downstairs upstairs to the kitchen holding the Child and he had a video

camera and was following the Wife around. The police arrived and told the Husband to sit down, put down the video camera and not move. They took the Husband to another room. The police asked the Husband if he would leave and he said no. The police instructed the Wife to leave with the Child and the Wife and Child went to a hotel.. According to the Wife the Husband did not go out of town that week. The parties went back to Court the next day but it was a Court holiday and after talking to her own attorney and the Child Representative the Wife decided to go to New Jersey with the Child for a couple of days until the parties could come back to court. The Wife was in New Jersey for 5-6 days. The Husband accused the Mother of kidnapping the Child. When the parties returned to Court the Wife was awarded exclusive possession of the home.

100. That the Wife testified that she has used the video camera on a different occasion. On that occasion the Husband was watching the Child. The Child was crying when the Wife entered the room. The Child had a big bump on her head. The Wife asked the Husband what happened and the Husband said, "None of your business." The Husband said this was his parenting time and the Wife did not have the right to know what happened to the Child's head. The Mother offered an ice pack which the Father refused to take so the Mother said she would have to document this and she videotaped the bump.

101. That the Wife testified that at her house on the Child's nightstand there is a picture of the Child and the Father at the lake. The Wife testified further that the Father calls the Child, but that the Child has no interest in talking on the phone with anyone. The Wife stated that she suggests things for the Child to say and that the when the Child is on the phone the Father wants to read the Child a story from a book.

102. That the Wife testified that the Father has clothes for the Child from second hand stores and that she does not want these clothes. She denies stealing the Child's clothes from the Father.

103. That the Wife testified regarding finances that at the time the parties married her income was deposited directly into her account at Summit Bank which she opened in 1989 when she graduated from college, and the Husband's paycheck was deposited directly into his account at Citibank. The Wife testified that in the beginning both parties paid bills and that neither party had a set bill to pay but that the Husband typically paid the rent. The Wife stated that she gave the Husband large checks from her account -- $8,000.00, $12,000.00, and that there was no set formula; she would look at the balance and know what bills were coming in. The Wife testified that she saved no money outside of her retirement account.

104. That the Wife testified that the parties agreed to a joint account and to a separate account for each of them.

105. That the Wife testified that at the end of 1999 after the Child was born and after the Husband gave her the spreadsheet for wedding expenses and expressed a desire for a divorce she transferred $4,000.00 to her father. The Wife stated that she was feeling nervous and insecure. Her father deposited the money to a savings account in his name, but the Wife intended to have some money for security, to have cash if necessary. The Wife stated that at that time her father was in retirement, had been laid off from his last job, was looking for work, and worked part-time delivering candy and nuts, but at the beginning of 2000 the candy and nut company went into Chapter 9, and the roof on her parents' house fell in and caused a gaping hole. The Wife testified that she told her father to use the money for the roof repair which he did, and she did not tell the Husband because anything to do with her parents caused a fierce disruption

between the parties. The Wife stated that giving the money was not wrong but she should have told the Husband.

106. That the Wife testified that she gave her sister $2,000.00 for her final semester at college and that she should have discussed it with the Husband. The Wife stated that the small credit card payments were for charges where her sister would buy things for the parties (no tax) and the Wife would reimburse her sister for the credit card charges.

107. That the Wife testified that when the parties moved to Chicago they bought an Acura SUV and at the end of 2-2002 she bought a used BMW station wagon for $30,000.00. She was in a car accident and the current value of the BMW is $20,000.00, and she owes money.

108. That the Wife testified that the Husband had dental work done which cost over $5,000.00. The Wife testified that when the Husband moved out he used money from the joint account to pay moving expenses, and that before he moved out he took $10,000.00 from the joint account to retain an attorney and left $1,000.00 in the joint account. The Wife stated that she called Citibank to setup her own checking account and Citibank transferred the $1,000.00 the Husband left to the Wife's newly setup account. The Wife testified further that she did not know any funds were earmarked for the Child.

109. That the Wife testified that her net monthly income is $5,975.00 and that her monthly expenses are $7,545.00. (Wife's exhibit 3) The Wife testified further that she is seeking guidelines child support based on the Husband's gross annual income of $135,000.00.

110. That regarding her clothing the Wife testified that there was a flood in the home in the spring of 2001. The Wife testified that 12 weeks after the Child was born she weighed 160 pounds and that at trial she weighed 132 pounds. According to the Wife she had few clothes that fit

and she bought clothes when she went back to work. The Wife testified that she bought clothes as she lost weight and that at the time of trial she owned 5 business suits, and that the last one was purchased in the fall of 2002.

111. That on the issue of custody the Wife testified that her strengths as a parent are her judgment for the Child's best interest and her unconditional love for the Child. She stated, "I'm very nurturing and compassionate" for the Child and patient. The Wife stated that she responds to the Child's needs by being very aware of what is going on with her; she tries to talk to the Child and try to understand what is going on with her. The Wife stated that her weaknesses are that she is somewhat insecure as a parent and wants to build confidence. She stated that she was never strong in the finance area. The Wife testified that the Husband's strengths are that he is very focused, he loves the Child, he has good teaching skills, he is very animated and athletic, he teaches the Child athletic things. The Wife testified that the Husband's weaknesses are in the unconditional love aspects where he puts stipulations and conditions on the Child and others. As an example the Wife stated that if the Child were to disobey the Father the Father would not speak to the Child, the Father would shut the Child out. And, on the issue of judgment the Wife stated that "not everything is black and white, a lot of gray is in the world we live in." The Wife stated that the Husband's "interpretations are so rigid."

112. That the Wife testified that she is seeking sole custody because since the Child was born the parties have had numerous disagreements and arguments and if the Wife will concede to the Husband's extreme demands then there is no compromise and nothing in the middle, so, its either the Husband's way or go to Court or silence. The Wife stated that if she negotiates an agreement with the Husband then she will end up conceding and she is for DECISION MAKING WITHOUT GOING TO COURT.

113. That the Wife testified that the current parenting schedule is that the Child is with the Father on Mondays and Tuesdays; she is with the Mother on Wednesdays and Thursdays and the parties alternate the weekends Friday, Saturday, Sunday. The Father has dinner with the Child on Monday nights and the Mother has dinner with the Child on Thursday nights. According to the Mother the schedule is disruptive to the Child – one day here and one day there, one night dinner here and one night dinner there. The Mother stated that the Child does not know what house she will be at any given day.

114. That when asked why the Child should spend more time with the Mother than with the Father, the Mother said that she feels the Child will have stability and nurturing and over all would have a normal routine and a home that she comes to after school and she would have stability in her life. The Mother stated that the Father has demonstrated some behaviors that will not be good for the Child in the long run and the Mother will try to compensate and build those things in the Child.

115. That the Husband testified that he paid his attorneys $68,000.00

116. That during the course of the trial the Husband filed a 92 page Motion to Reconsider the Court's ruling concerning 2 items of personal property.

117. That the Wife's major assets are as follows:

a. Accenture profit-sharing and 401 (k) plan valued at $62,400.00 as of 7-23-2003

b. Vanguard Windsor IRA Fund valued at $6,800.00 as of 7-23-2003

118. That the Wife's debts are as follows:

a. attorneys' fees and costs $133,410.62 minus payment of $11,533.00 = $121,877.62 as of 7-23-2003

119. That during the course of the trial the Husband was ordered to pay interim fees to the Wife's attorneys in the amount of $56,467.00.

120. That on 7-24-2003 in open court the parties agreed to the distribution of the following 11 items and these items are hereby awarded to the Husband:

(1) one chair as part of the round table and 4 chairs

(2) two chairs from New York table and 6 chairs if Husband can find them because Wife does not know where they are

(3) 4 wall speakers

(4) black and white picture in bathroom

(5) 2 pictures from guest room

(6) white mirror

(7) food holder

(8) black and white marwen picture

(9) phone from Samantha's room

(10) wall cabinet

(11) phone from laundry room

121. That Dr. Alan Childs the 604(b) custody evaluator testified on 7-31-2003.

122. That the Husband testified that the date of the irretrievable breakdown of the marriage is 6-1-2001 and the Court so finds. The Court finds further that no dissipation occurred before the date of 6-1-2001.

123. That the Husband does not understand the concept of "marital property."

124. That the Husband does not understand the concept of "non-marital property."

125. That the Husband is controlling and uncompromising. The Husband is inflexible. The Husband is a bully. There is no middle ground for the Husband. In the Husband's own words everything is "either black or white, there is no gray." This rigidity in the Husband makes the Husband unable to jointly parent the Child.

126. That the parties are unable to jointly parent the Child.

127. That it is not in the Child's best interest that the parties be awarded joint custody of the Child.

128. That it is in the best interest of the Child that the Mother be awarded the sole care, custody, control and education of the Child.

129. That guidelines child support is calculated as follows:

a. Husband's gross annual income = $135,000.00 or $1 1,250.00 per month.

b. minus federal tax: federal tax = $135,000.00 minus $4,750.00 for single return or $130,250.00; minus $3,050.00 for one exemption = $127,200.00 times 25.56% tax rate = federal tax of $32,512.32 or $2709.36 per month

c. minus state tax: state tax = $135,000.00 minus $2,000.00 for one exemption = $133,000.00 times 3% tax rate = state tax of $3,990.00 or $332.50 per month

d. minus social security tax: social security tax = $5,394.00 or $449.50 per month

e. minus Medicare tax: Medicare tax = $135,000.00 times 1.45% = $1,957.50 or $163.13 per month

f. Husband's net monthly income = $7,595.51

g. guidelines child support = 20% of $7,595.51 = $1,519.10 per month

FOR THE FOREGOING REASONS IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

A. That the parties are awarded a Judgment for Dissolution of Marriage, and the bonds of matrimony existing between the Petitioner, BRIAN LOVETT, and the Respondent, LAURIE LOVETT, are hereby dissolved and each is freed from the bonds thereof.

B. That the Wife, LAURIE LOVETT, shall have the sole care, custody, control and education of the minor child of the parties, SAMANTHA LOVETT, born November 13, 1999.

C. That the Husband shall have visitation with the minor child as follows:

1. every other weekend from Friday at 7:00 pm until Sunday at 7:00 pm beginning Friday June 11, 2004

2. every Tuesday and every Thursday from 5:00 pm to 7:00 pm beginning Tuesday, June 8, 2004

3. holiday visitation shall occur on an alternating year basis from 9:00 am until 7:00 pm on the holiday itself as follows:

(a) Memorial Day: odd with Father, even with Mother

(b) July 4th: even with Father, odd with Mother

(c) Labor Day: odd with Father, even with Mother

(d) Thanksgiving Day: even with Father, odd with Mother

(e) Child's birthday, November 13th: odd with Father from 5:00 pm until 7:00 pm, even with Mother

(f) each parent will have the minor child for visitation on that parent's birthday from 5:00 pm until 7:00 pm regardless of whose "day" it is

(g) the Child will always be with the Mother on Mother's Day from 9:00 am until 7:00 pm regardless of whose "day" it is

(h) the Child will always be with the Father on Father's Day £torn 9:00 am until 7:00 pm regardless of whose "day" it is

(i) the Child shall be with the Father in odd numbered years for Spring break beginning the first full day of Spring break and ending the last full day of Spring break

(j) the Child shall be with the Mother in even numbered years for Spring break beginning the first full day of Spring break and eliding the last full day of Spring break

(k) the Child shall be with the Mother in odd numbered years for the first half of Winter break and with the Father in odd numbered years for the second half of Winter break

(l) the Child shall be with the Father in even numbered years for the first half of Winter break and with the Mother in even numbered years for the second half of Winter break

(m) each parent shall have three uninterrupted, non-consecutive weeks with the Child each summer. In even numbered years the Wife shall have first choice of when her three weeks will be, and she shall notify the Husband in writing of her three choices no later than June 1st of that year (except in 2004 she shall notify the Husband no later than June 30th). In odd numbered years the Husband shall have first choice of when his three weeks will be, and he shall notify the Wife in writing of his three choices no later than June 1st of that year. Once the parent who has first choice in a given year has advised the other parent of his/her choices, then the other parent shall make his/her choices and notify the first-choosing parent in writing of the three non-consecutive weeks that he/she has chosen no later than June 8th of that year (except in 2004 the Father shall notify the Mother no later than July 7th).

D. That when the Child is in the home of either parent the other parent shall be allowed to communicate with the Child by telephone, and the Child shall be allowed to receive telephone calls from the other parent at all reasonable times. The Child shall be allowed to call either parent at any time.

E. That whenever the Child is out of town, both parents shall always be provided in advance with the Child's itinerary, the names, addresses, and phone numbers of the places the Child will be staying and the people the Child will be staying with.

F. That each parent shall keep the other parent advised of his/her current address and telephone number at home and at work.

G. That each parent shall have full access to the Child's school, medical, and religious training records.

H. That so long as he has a duty to support or educate the Child, the Father shall name the Child as the irrevocable beneficiary of any life insurance policy he may have through his place of employment or otherwise, but in no event past the Child's 23rd birthday, and he shall provide the Wife with proof thereof.

I. That neither party shall remove the minor Child from the State of Illinois without the written agreement of the parties or a Court Order except for periods of vacation.

J. That the Mother shall provide the primary medical coverage for the Child for so long as she has a duty to support or educate the Child but in no event past the Child's 23rd birthday.

K. That the Father shall provide the secondary medical coverage for the Child for so long as he has a duty to support or educate the Child but in no event past the Child's 23rd birthday.

L. That out of pocket medical expenses of the Child not covered by insurance shall be paid 50/50 by the parties.

M.. That beginning June 1, 2004 the Husband shall pay guidelines child support to the Wife for the support of the minor child in the amount of $1,519.10 per month. Child support shall terminate on November 13, 2017 unless the Child is still in high school on November 13, 2017 and in that case child support shall terminate on the exact date that the Child graduates from high school but in no event past the Child's 19th birthday. Child support payments shall be made through the State Disbursement Unit.

N. That the Wife shall claim the minor child as a tax exemption every year.

O. That each parent's contribution to the college education expenses of the minor child shall be determined by Section 513 of the Illinois Marriage and Dissolution of Marriage Act.

P. That the Husband shall not be reimbursed for the payments he was ordered to make to the Wife pursuant to the order entered 9-30-2002.

Q. That except for the interim attorneys' fees and costs awarded to the Wife during the course of this litigation for which the Husband shall not be reimbursed, each party shall pay their own attorneys' fees and costs incurred in connection with this case without any further contribution from the other party.

R. That except for the payments the Husband was ordered to make to the Wife pursuant to the order entered 9-30-2002 both parties shall be forever barred from ever claiming or receiving maintenance, past, present, or future from the other party.

S. That the Husband is assigned his non-marital property identified in paragraph 23 of the findings herein free from any claim by the Wife.

T. That the Husband is awarded the personal property identified in paragraph 24 b. (1), IBM Employee Stock Ownership Plan; 24 b. (2), IBM 401 (k) plan; 24 b. (3), IRA at Citibank; 24 b. (5), life insurance policy; 24 b. (7), 1998 Acura Sports Utility Vehicle; 24 b. (8), Husband's checking account at Citibank, and paragraph 120 free from any claim by the Wife.

U. That the Husband shall be solely responsible for the debts itemized in paragraph 24 c. of the findings herein without any contribution from the Wife and he shall indemnify and hold the Wife harmless thereon.

V. That the Wife is awarded the personal property identified in paragraph 117 of the findings herein free from any claim by the Husband, and the Wife is awarded the BMW automobile and her checking account free from any claim by the Husband.

W. That with the exception of the Husband's platinum wedding band, the Wife is assigned as her non-marital property all of the jewelry described in paragraph 49 of the findings herein free from any claim by the Husband.

X. That the parties marital property, the condominium located at 2034 N. Seminary, Unit 1, Chicago, Illinois, shall be placed on the market on or before June 30, 2004, and sold at its fair market value. The net proceeds from the sale after the payment of the mortgage and all other reasonable and necessary expenses of sale shall be divided 50/50 between the parties. On or before June 8, 2004 the Husband shall sign a quitclalm deed transferring his interest in the marital home to the Wife in order to facilitate the sale of the property and the Wife shall be solely responsible for selling the property. If the Husband should fail or refuse to execute the quitclaim

deed then any judge of the Circuit Court of Cook County Domestic Relations Division is hereby authorized and empowered to sign a Judge's Deed transferring the Husband's interest in the marital home to the Wife in order to facilitate the sale of the home.

Y. That each party shall have as his/her sole property the personal property currently in his/her possession that has not been addressed in other "decree" paragraph of this Judgment, free from any claim by the other party.

Z. That each party shall be solely responsible for any debts they have incurred individually, in their own names or for their own benefit that has not been addressed in any other "decree" paragraph of this Judgment, and they shall indemnify and hold the other party harmless thereon.

AA. That the Husband shall provide the Wife with a copy of his federal and state income tax returns along with all W-2 statements and 1099's for the previous year no later than May 1 of each year for so long as he has a duty to support or educate the Child.

BB. That the Wife shall be permitted to resume the use of her maiden name LAURIE WEISSBERGER if she so desires.

CC. That the Husband's constitutional challenges itemized as contested issues numbers 10, 11, and 12 are denied.

DD. That this Court expressly retains jurisdiction of this cause for the purpose of enforcing all of the terms of this Judgment for Dissolution of Marriage.

ENTER:

JUDGE R. MORGAN HAMILTON

DATE: June 1, 2004

Appendix E: Constitutional and Statutory Law Provisions

I. Amendment I of the Federal Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

II. Amendment XIV of the Federal Constitution

(in pertinent part)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

III. Article I of the Constitution of the State of Illinois

(in pertinent part)

Section 2. No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

Section 4. All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

IV. 750 ILCS 5/602

(750 ILCS 5/602) (from Ch. 40, par. 602)

Sec. 602. Best Interest of Child.

(a) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school and community;

(5) the mental and physical health of all individuals involved;

(6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;

(7) the occurrence of ongoing abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, whether directed against the child or directed against another person; and

(8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

In the case of a custody proceeding in which a stepparent has standing under Section 601, it is presumed to be in the best interest of the minor child that the natural parent have the custody of the minor child unless the presumption is rebutted by the stepparent.

(b) The court shall not consider conduct of a present or proposed custodian that does not affect his relationship to the child.

(c) Unless the court finds the occurrence of ongoing abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, the court shall presume that the maximum involvement and cooperation of both parents regarding the physical, mental, moral, and emotional well-being of their child is in the best interest of the child. There shall be no presumption in favor of or against joint custody.

(Source: P.A. 90-782, eff. 8-14-98.)

V. 750 ILCS 5/603

(750 ILCS 5/603) (from Ch. 40, par. 603)

Sec. 603. Temporary Orders.

(a) A party to a custody proceeding, including a proceeding to modify custody, may move for a temporary custody order. The court may award temporary custody under the standards of Section 602 and the standards and procedures of Section 602.1, after a hearing, or, if there is no objection, solely on the basis of the affidavits.

(b) If a proceeding for dissolution of marriage or legal separation or declaration of invalidity of marriage is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child requires that a custody judgment be issued.

(c) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation, under either subparagraph (ii) of paragraph (1), or paragraph (2), of subsection (d) of Section 601, is dismissed, any temporary custody order is vacated.

(Source: P.A. 86-530; 87-1255.)

VI. 750 ILCS 5/604

(750 ILCS 5/604) (from Ch. 40, par. 604)

Sec. 604. Interviews.) (a) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. Counsel shall be present at the interview unless otherwise agreed upon by the parties. The court shall cause a court reporter to be present who shall make a complete record of the interview instantaneously to be part of the record in the case.

(b) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel. Counsel may examine, as a witness, any professional personnel consulted by the court, designated as a court's witness.

(Source: P.A. 80-923.)

VII. 750 ILCS 5/607

(750 ILCS 5/607) (from Ch. 40, par. 607)

Sec. 607. Visitation.

(a) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health. If the custodian's street address is not identified, pursuant to Section 708, the court shall require the parties to identify reasonable alternative arrangements for visitation by a non-custodial parent, including but not limited to visitation of the minor child at the residence of another person or at a local public or private facility.

(b) (1) The court may grant reasonable visitation privileges to a grandparent, great-grandparent, or sibling of any minor child upon petition to the court by the

grandparents or great-grandparents or on behalf of the sibling, with notice to the parties required to be notified under Section 601 of this Act, if the court determines that it is in the best interests and welfare of the child, and may issue any necessary orders to enforce such visitation privileges. Except as provided in paragraph (2) of this subsection (b), a petition for visitation privileges may be filed under this paragraph (1) whether or not a petition pursuant to this Act has been previously filed or is currently pending if one or more of the following circumstances exist:

(A) the parents are not currently cohabiting on a permanent or an indefinite basis;

(B) one of the parents has been absent from the marital abode for more than one month without the spouse knowing his or her whereabouts;

(C) one of the parents is deceased;

(D) one of the parents joins in the petition with the grandparents, great-grandparents, or sibling; or

(E) a sibling is in State custody.

(1.5) The Court may grant reasonable visitation privileges to a stepparent upon petition to the court by the stepparent, with notice to the parties required to be notified under Section 601 of this Act, if the court determines that it is in the best interests and welfare of the child, and may issue any necessary orders to enforce those visitation privileges. A petition for visitation privileges may be filed under this paragraph (1.5) whether or not a petition pursuant to this Act has been previously filed or is currently pending if the following circumstances are met:

(A) the child is at least 12 years old;

(B) the child resided continuously with the parent and stepparent for at least 5 years;

(C) the parent is deceased or is disabled and is unable to care for the child;

(D) the child wishes to have reasonable visitation with the stepparent; and

(E) the stepparent was providing for the care, control, and welfare to the child prior to the initiation of the petition for visitation.

(2)(A) A petition for visitation privileges shall not be filed pursuant to this subsection (b) by the parents or grandparents of a putative father if the paternity of the putative father has not been legally established.

(B) A petition for visitation privileges may not be filed under this subsection (b) if the child who is the subject of the grandparents' or great-grandparents' petition has been voluntarily surrendered by the parent or parents, except for a surrender to the Illinois Department of Children and Family Services or a foster care facility, or has been previously adopted by an individual or individuals who are not related to the biological parents of the child or is the subject of a pending adoption petition by an individual or individuals who are not related to the biological parents of the child.

(3) When one parent is deceased, the surviving parent shall not interfere with the visitation rights of the grandparents.

(c) The court may modify an order granting or denying visitation rights of a parent whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral or emotional health. The court may modify an order granting, denying, or limiting visitation rights of a grandparent, great-grandparent, or sibling of any minor child whenever a change of circumstances has occurred based on

facts occurring subsequent to the judgment and the court finds by clear and convincing evidence that the modification is in the best interest of the minor child.

(d) If any court has entered an order prohibiting a non-custodial parent of a child from any contact with a child or restricting the non-custodial parent's contact with the child, the following provisions shall apply:

(1) If an order has been entered granting visitation privileges with the child to a grandparent or great-grandparent who is related to the child through the non-custodial parent, the visitation privileges of the grandparent or great-grandparent may be revoked if:

(i) a court has entered an order prohibiting the non-custodial parent from any contact with the child, and the grandparent or great-grandparent is found to have used his or her visitation privileges to facilitate contact between the child and the non-custodial parent; or

(ii) a court has entered an order restricting the non-custodial parent's contact with the child, and the grandparent or great-grandparent is found to have used his or her visitation privileges to facilitate contact between the child and the non-custodial parent in a manner that violates the terms of the order restricting the non-custodial parent's contact with the child.

Nothing in this subdivision (1) limits the authority of the court to enforce its orders in any manner permitted by law.

(2) Any order granting visitation privileges with the child to a grandparent or great-grandparent who is related to the child through the non-custodial parent shall contain the following provision:

"If the (grandparent or great-grandparent, whichever is applicable) who has been granted visitation privileges under this order uses the visitation privileges to facilitate contact between the child and the child's non-custodial parent, the visitation privileges granted under this order shall be permanently revoked."

(e) No parent, not granted custody of the child, or grandparent, or great-grandparent, or stepparent, or sibling of any minor child, convicted of any offense involving an illegal sex act perpetrated upon a victim less than 18 years of age including but not limited to offenses for violations of Article 12 of the Criminal Code of 1961, is entitled to visitation rights while incarcerated or while on parole, probation, conditional discharge, periodic imprisonment, or mandatory supervised release for that offense, and upon discharge from incarceration for a misdemeanor offense or upon discharge from parole, probation, conditional discharge, periodic imprisonment, or mandatory supervised release for a felony offense, visitation shall be denied until the person successfully completes a treatment program approved by the court.

(f) Unless the court determines, after considering all relevant factors, including but not limited to those set forth in Section 602(a), that it would be in the best interests of the child to allow visitation, the court shall not enter an order providing visitation rights and pursuant to a motion to modify visitation shall revoke visitation rights previously granted to any person who would otherwise be entitled to petition for visitation rights under this Section who has been convicted of first degree murder of the parent, grandparent, great-grandparent, or sibling of the child who is the subject of the order. Until an order is entered pursuant to this subsection, no person shall visit, with the child present, a person who has been convicted of first degree murder of the parent, grandparent, great-grandparent, or sibling of the

child without the consent of the child's parent, other than a parent convicted of first degree murder as set forth herein, or legal guardian.

(g) If an order has been entered limiting, for cause, a minor child's contact or visitation with a grandparent, great-grandparent, or sibling on the grounds that it was in the best interest of the child to do so, that order may be modified only upon a showing of a substantial change in circumstances occurring subsequent to the entry of the order with proof by clear and convincing evidence that modification is in the best interest of the minor child.

(Source: P.A. 90-782, eff. 8-14-98; 90-801, eff. 6-1-99; 91-357, eff. 7-29-99; 91-610, eff. 8-19-99.)

VIII. 750 ILCS 5/609

(750 ILCS 5/609) (from Ch. 40, par. 609)

Sec. 609. Leave to Remove Children.) (a) The court may grant leave, before or after judgment, to any party having custody of any minor child or children to remove such child or children from Illinois whenever such approval is in the best interests of such child or children. The burden of proving that such removal is in the best interests of such child or children is on the party seeking the removal. When such removal is permitted, the court may require the party removing such child or children from Illinois to give reasonable security guaranteeing the return of such children.

(b) Before a minor child is temporarily removed from Illinois, the parent responsible for the removal shall inform the other parent, or the other parent's attorney, of the address and telephone number where the child may be reached during the period of temporary removal, and the date on which the child shall return to Illinois.

The State of Illinois retains jurisdiction when the minor child is absent from the State pursuant to this subsection.

(Source: P.A. 85-768.)

IX. 750 ILCS 5/610

(750 ILCS 5/610) (from Ch. 40, par. 610)

Sec. 610. Modification.

(a) Unless by stipulation of the parties, no motion to modify a custody judgment may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral or emotional health.

(b) The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment, that a change has occurred in the circumstances of the child or his custodian, or in the case of a joint custody arrangement that a change has occurred in the circumstances of the child or either or both parties having custody, and that the modification is necessary to serve the best interest of the child. In the case of joint custody, if the parties agree to a termination of a joint custody arrangement, the court shall so terminate the joint custody and make any modification which is in the child's best interest. The court shall state in its decision specific findings of fact in support of its modification or termination of joint custody if either parent opposes the modification or termination.

(c) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(d) Notice under this Section shall be given as provided in subsections (c) and (d) of Section 601.

(Source: P.A. 87-1255.)

X. 750 ILCS 5/503 (g)

(in pertinent part)

(750 ILCS 5/503) (from Ch. 40, par. 503)

Sec. 503. Disposition of property.

(g) The court if necessary to protect and promote the best interests of the children may set aside a portion of the jointly or separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent child of the parties. In making a determination under this subsection, the court may consider, among other things, the conviction of a party of any of the offenses set forth in Section 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 if the victim is a child of one or both of the parties, and there is a need for, and cost of, care, healing and counseling for the child who is the victim of the crime.

XI. 750 ILCS 5/506

(750 ILCS 5/506) (from Ch. 40, par. 506)

Sec. 506. Representation of child.

(a) Duties. In any proceedings involving the support, custody, visitation, education, parentage, property interest, or general welfare of a minor or dependent child, the court may, on its own motion or that of any party, and subject to the terms or specifications the court determines, appoint an attorney to serve in one of the following capacities:

(1) as an attorney to represent the child;

(2) as a guardian ad litem to address issues the court delineates;

(3) as a child's representative whose duty shall be to advocate what the representative finds to be in the best interests of the child after reviewing the facts and circumstances of the case. The child's representative shall have the same power and authority to take part in the conduct of the litigation as does an attorney for a party and shall possess all the powers of investigation and recommendation as does a guardian ad litem. The child's representative shall consider, but not be bound by, the expressed wishes of the child. A child's representative shall have received training in child advocacy or shall possess such experience as determined to be equivalent to such training by the chief judge of the circuit where the child's representative has been appointed. The child's representative shall not disclose confidential communications made by the child, except as required by law or by the Rules of Professional Conduct. The child's representative shall not be called as a witness regarding the issues set forth in this subsection.

During the proceedings the court may appoint an additional attorney to serve in another of the capacities described in subdivisions (a)(1), (a)(2), or (a)(3) on its own motion or that of a party only for good cause shown and when the reasons for the additional appointment are set forth in specific findings.

(b) Fees and costs. The court shall enter an order as appropriate for costs, fees, and disbursements, including a retainer, when the attorney, guardian ad litem, or child's representative is appointed, and thereafter as necessary. Such orders shall require payment by either or both parents, by any other party or source, or from the marital estate or the child's separate estate. The court may not order payment by the Illinois Department of Public Aid in cases in which the

Department is providing child support enforcement services under Article X of the Illinois Public Aid Code. Unless otherwise ordered by the court at the time fees and costs are approved, all fees and costs payable to an attorney, guardian ad litem, or child's representative under this Section are by implication deemed to be in the nature of support of the child and are within the exceptions to discharge in bankruptcy under 11 U.S.C.A. 523. The provisions of Sections 501 and 508 of this Act shall apply to fees and costs for attorneys appointed under this Section.

(Source: P.A. 91-410, eff. 1-1-00; 92-590, eff. 7-1-02.)